ESTTA Tracking number: **ESTTA636748**

Filing date: **11/03/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|---|---|
| Proceeding | 92057941 |
| Party | Plaintiff<br>Clockwork IP, LLC |
| Correspondence Address | PURVI J PATEL<br>HAYNES AND BOONE LLP<br>2323 VICTORY AVENUE , SUITE 700<br>DALLAS, TX 75219<br>UNITED STATES<br>patelp@haynesboone.com, ipdocketing@haynesboone.com |
| Submission | Opposition/Response to Motion |
| Filer's Name | Purvi J. Patel |
| Filer's e-mail | jcelum@celumlaw.com, patelp@haynesboone.com, ipdocket-ing@haynesboone.com, debbie.noel@haynesboone.com |
| Signature | /Purvi J. Patel/ |
| Date | 11/03/2014 |
| Attachments | Revised Petitioner Objections extracting Exhibit.pdf(885218 bytes )<br>Exhibits A - K.pdf(5367939 bytes ) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|---|
| Clockwork IP, LLC | § | Mark: **COMFORTCLUB** |
| | § | |
| *Petitioner,* | § | |
| | § | |
| v. | § | Cancellation No. 92057941 |
| | § | In re Registration No. 3618331 |
| Barnaby Heating & Air | § | |
| | § | |
| | § | |
| *Respondent.* | § | |

**PETITIONER'S OBJECTION AND BRIEF IN OPPOSITION TO RESPONDENT'S MOTION TO JOIN ASSIGNEE AND REOPEN DISCOVERY**

Petitioner Clockwork IP, LLC hereby respectfully responds to Respondent Barnaby Heating & Air, LLC's Motion to Join Assignee and Motion to Reopen Discovery and Extend the Trial Setting dated October 17, 2014, and requests that Respondent's Motions to Join Assignee and Reopen Discovery be DENIED, but consents to a reasonable extension of trial dates.

## I. INTRODUCTION

Respondent's Motion to Reopen Discovery should be denied for the following reasons: (a) Petitioner will be prejudiced if the discovery period is opened five (5) months after the closure of the discovery period, (b) the length of the delay will have a potential negative impact on judicial proceedings, (c) Respondent has not cited a single case in favor of reopening the discovery period nor has it demonstrated prejudice or the required standard of "excusable neglect," (d) relatedly, Respondent has a history of failing to respond to TTAB deadlines on a timely basis and despite communications with Petitioner's counsel, Respondent's counsel has yet to fully respond to Petitioner's discovery requests, and in fact, it would appear that this assignment of the subject registration may be a sham and potentially bad faith attempt to reopen the discovery period, and (e) statements in Respondent's Motion itself demonstrate why the Motion to Reopen Discovery by Respondent should be denied, including its

internally inconsistent assertions alleging that McAfee is "an indispensable party in interest" in Paragraph 6, but "Assignee agrees to be joined in this proceeding, only if discovery is reopened" in Paragraph 7.

To be clear, Respondent will not be prejudiced if McAfee Heating & Air is not joined, nor will it be prejudiced if the discovery periods are not reopened. Petitioner's bases for this cancellation include fraud on the Trademark Office pursuant to Section 14 of the Trademark Act (Paragraphs 31-38 of the Petition to Cancel), relatedly that Respondent was not the rightful owner of Respondent's Mark at the time it filed the application, nor was it the rightful owner of Respondent's Mark at the time of the filing of this cancellation, and thus the registration is void *ab initio* pursuant to Section 1 of the Trademark Act and TMEP Sections 1201.1(b) and 803.06 (Paragraphs 36-38 of the Petition), as well as likelihood of confusion under Section 2(d) of the Trademark Act (Paragraphs 21-30). The issues of fraud on the Trademark Office and Barnaby Heating & Air being the wrongful owner at the time of filing and at the time of this cancellation do not involve or implicate McAfee Heating and Air at all. Moreover, in an effort to settle this dispute, Petitioner supplied Respondent with documentation and evidence supporting these three claims asserted by Petitioner in the context of settlement negotiations. **See Exhibit A** for a representative sample. Accordingly, Respondent will not be prejudiced by the Board's denial of Respondent's Motions to Join or to Reopen Discovery.

## II. BACKGROUND OF PROCEEDINGS

On September 27, 2013, Petitioner filed this Cancellation No. 92057941 against Respondent's registration of the mark COMFORTCLUB ("Respondent's Mark") shown in U.S. Registration No. 3,618,331 (the "Registration"). A Scheduling Order was issued by the Board that same day, wherein discovery was set to open on December 6, 2013 and close on June 4, 2014.

Petitioner timely served its First Set of Interrogatories, First Set of Requests for the Production of Documents and Things, and First Set of Requests for Admissions to Respondent via First Class Mail on June 4, 2014. **Exhibits B, C, and D (collectively, Petitioner's Discovery Requests")** (Per TMBP

113(c), 37 CFR Section 2.119, "when service is made by first-class mail ... the date of mailing ... will be considered the date of service."). At no point did Respondent serve any discovery requests on Petitioner.

On June 30, counsel for Respondent contacted counsel for Petitioner via email and stated that she had just received, for the first time, Petitioner's Discovery Requests. **Exhibit E**. Counsel for Respondent stated that "through no fault of your client's [Petitioner] or mine [Respondent]" the envelope containing the requests was delivered to another mailbox holder in counsel's suite. *Id.* Respondent requested additional time to respond to Petitioner's Discovery Requests due to the delay. *Id.* The parties eventually agreed that Respondent's deadline to respond would be extended until July 15, 2014. *Id.* No agreement to reopen discovery was discussed at that time, and counsel for Respondent made no assertion that Petitioner's Discovery Requests were untimely. However, in an email dated July 17, 2014, counsel for Respondent falsely suggested that Petitioner's Discovery Requests were served outside the discovery period and that "documents [responsive to Petitioner's Discovery Requests] may be obtained only upon a reciprocal extension of the discovery deadline." **Exhibit F**. Respondent's counsel set forth the same allegations in Respondent's Objections and [nonresponsive] Responses to Petitioner's First Set of Interrogatories, First Requests for Production, and First Requests for Admission, and continued to assert that it is not obligated to respond to discovery on this basis, but notes that "Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case," intimating once again that they would be cooperative if Petitioner were to agree to reopen discovery. **Exhibit G** for representative examples of such objection. Again in its Motion dated October 17, 2014, it continued to falsely and incorrectly allege that Petitioner's Discovery Requests were served after the closing of discovery.

On July 16, 2014, prior to receipt of Respondent's Objections and Responses, Petitioner proposed a 30 day extension of the outstanding dates in this proceeding, as Petitioner's Pretrial Disclosures were due in three days and additional time would be needed to review Respondent's incoming discovery responses. **Exhibit F** p. 2. The parties continued to conference on the above issues and agreed to a 60-day extension of all ***future*** deadlines. During the parties' conferencing, counsel for Respondent

represented that once the extension was filed, Respondent would "move forward with supplementing our discovery responses and will produce those documents responsive to your requests." *Id.* p. 2. The Board granted the parties' stipulated motion to extend the outstanding case deadlines. However, Respondent initially failed to supplement its discovery responses or produce responsive documents as it had previously represented.

On September 9, 2014, counsel for Petitioner emailed counsel for Respondent requesting a discovery conference via telephone to resolve the deficiencies in Respondent's Objections and Responses. **Exhibit H**. Petitioner also proposed an additional 30-day extension of the outstanding case deadlines as an option to assist in the resolution of the discovery issues. *Id.* Petitioner followed up with Respondent the next day with a more detailed outline of its issues with Respondent's Objections and Responses. **Exhibit I**. Petitioner's counsel followed up later that day with a phone call to Respondent's counsel. Respondent's counsel indicated that she would be reviewing Petitioner's letter but there were alleged "new facts" that would impact the case. Respondent's counsel agreed to a discovery conference to take place on September 12, 2014.

The parties subsequently conferenced on the outstanding issues on September 12, 2014, at which Respondent agreed to supplement its discovery responses and make responsive documents available by no later than September 24, 2014. **Exhibit J p. 2.** The parties also agreed to a 45 day extension of all open deadlines, but expressly did not agree to open any past/closed deadlines, including the discovery period. *Id.* On September 16, 2014, Respondent's counsel indicated that Respondent intended on "filing a joinder" (without providing any information regarding the parties that sought to join) and a "motion to reopen discovery/reset the current deadlines" and requested consent from Petitioner for same. *Id. p. 1.* Petitioner's counsel denied consent. On September 25, 2014, Respondent served its First Amended Responses to Petitioner's First Interrogatories, Request for Production and Request for Admission (the "Amended Response"). The last document produced was an unsigned assignment of Respondent's mark to a company named McAfee Heating & Air Conditioning, with a license back to Barnaby. **Exhibit J**.

However, no executed documents regarding the assignment were included with the Amended Response. Petitioner is in the process of finalizing a Motion to Compel in this cancellation.

On October 17, nearly a month after serving the Amended Response, Respondent filed its Motion to Join and Motion to Reopen and Extend the Trial Setting. Respondent's Motion alleges that Respondent assigned Respondent's Mark to McAfee on September 30, 2014 (despite assertions in the Amended Response that assignment was earlier) – well after the close of discovery in this case. Respondent's motion argues that McAfee would be prejudiced if it is joined in this proceeding and it is not allowed to participate in the now-closed discovery. Respondent also makes a strange assertion on behalf of McAfee that McAfee "agrees to be joined in this proceeding, only if discovery is reopened and [McAfee] is allowed to participate in discovery," implying that McAfee may be contesting its appearance in this case.

## III. ARGUMENTS AND AUTHORITY

### A. Respondent's Motion to Reopen Discovery Should be Denied for Failure to Demonstrate Excusable Neglect

Even if the TTAB decides to grant Respondent's Motion for Joinder, the standard and burden for reopening discovery, five (5) months after the closing date, has not been met by Respondent. Specifically, Respondent must show that its failure to act during the time previously allotted therefor was the result of "excusable neglect" and it has not met its burden in the instant case. *HKG Industries, Inc. v. Perma-Pipe, Inc.*, 49 USPQ2d 1156, 1158 (TTAB 1998) (motion to reopen denied because movant failed to provide detailed evidence and factual information in support of requested relief). Under *Pioneer Investments Services Company v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993) as adopted by the *Board in Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997), the determination of whether a party's neglect was excusable is an equitable one which takes into account the relevant factors surrounding the party's omission or delay, including (1) the danger of prejudice to the nonmovant, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, including

whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith.

With respect to the third and most important *Pioneer* factor, the reason for delay was entirely within Respondent's control, and its recent assignment of the Registration is a red herring. Respondent has not demonstrated how the information or documents in Petitioner's possession has changed since prior to the close of discovery on June 4, 2014. To be clear, the claims remain the same, as do the factual allegations with respect to Petitioner's use and allegations of likely confusion -- the assignment of rights does not alter that. Respondent had the chance to serve discovery requests, failed to do so, and has absolutely no explanation for its failure to take discovery during the prescribed period. Respondent's "requests" to Petitioner to reopen the discovery deadline all post-date the close of discovery – Respondent never asked for a suspension or extension prior to the closure of the discovery period. Moreover, Respondent, instead of properly responding to Petitioner's timely served Discovery Requests, has essentially held responsive information hostage for the last several months (with the suggestion that they would be more forthcoming if Respondent the ability to reopen the discovery period). See **Exhibits F and G.** Petitioner is in the process of preparing a Motion to Compel, but notes that Respondent's actions do not support a showing of good faith on the part of Respondent pursuant to the fourth *Pioneer* factor.

The first and second *Pioneer* factors also weigh against Respondent. Petitioner has a keen interest in obtaining closure of this costly cancellation, and will be prejudiced if the discovery period is reopened five (5) months after the closure of the discovery period. Respondent has already delayed the process as a result of its past unresponsiveness to Petitioner's Discovery Requests, and a reopen of discovery will also result in unnecessary and avoidable costs and time expended by Petitioner. If the Board were to grant Respondent's Motion to Reopen Discovery, it will deny Petitioner a timely resolution of the contested issues at hand. Respondent, with its Motion to Reopen, attempts to circumvent the TTAB Scheduling Order, judicial economy, and equity with respect to the Petitioner, all because it failed to take discovery on a timely basis. Clearly, the length of the delay resulting from a reopening of

discovery will not only burden Petitioner with the uncertainty and costs associated with a pending dispute, but also will have a potential negative impact on judicial proceedings. *Jodi Kristopher, Inc. v. International Seaway Trading Corp.*, 88 USPQ2d 1798 (TTAB 2008) [not precedential] ("from a docket management standpoint ... the delay has a significant potential impact on the judicial proceedings because reopening discovery would extend proceedings by eight months (six months for discovery and a sixty-day period between discovery and trial) which runs counter to the Board's interest in expeditious adjudication of this case").

In view of the foregoing, it is clear that all four of the *Pioneer* factors support denial of Respondent's Motion to Reopen Discovery. Respondent's counsel has not demonstrated excusable neglect or that Respondent would be unduly prejudiced, and thus, it is respectfully requested that Respondent's Motion be Denied.

**B. Response to Motion to Join Assignee**

Inconsistent statements in Respondent's Motion demonstrate why the Motion to Join McAfee Heating & Air should be denied. On the one hand, in Paragraph 6, Respondent asserts that McAfee is "an indispensable party in interest," but in the next Paragraph asserts that "Assignee agrees to be joined in this proceeding, only if discovery is reopened." Clearly, Assignee is only indispensable if Respondent gets what it wants, namely, the reopening of discovery. Accordingly, if the Board denies Respondent's Motion to Reopen Discovery, it should respect Respondent's wishes and deny joinder of McAfee.

In addition to its own semi-admission that it will not be prejudiced if Assignee is not joined to the current cancellation proceeding, Respondent will also not be prejudiced because (i) Barnaby received an "exclusive license" from McAfee Heating & Air and essentially stands in its shoes, (ii) Barnaby's counsel remains the lead counsel for this case, and (iii) the allegations herein focus on Respondent's state of mind and knowledge in filing its application for and using COMFORTCLUB. Petitioner's bases for cancellation in this Cancellation No. 92057941, include fraud on the Trademark Office pursuant to Section 14 of the Trademark Act (Paragraphs 31-38 of the Petition to Cancel), relatedly that Respondent

was not the rightful owner of Respondent's Mark at the time it filed the application nor was it the rightful owner of Respondent's Mark at the time of filing of the Petition pursuant to Section 1 of the Trademark Act and TMEP Sections 1201.1(b) and 803.06 and thus the registration is *void ab initio* (Paragraphs 36-38 of the Petition), as well as likelihood of confusion under Section 2(d) of the Trademark Act (Paragraphs 21-30). The issues of fraud on the Trademark Office and Barnaby Heating & Air being the wrongful owner at the time of filing and at the time of this cancellation do not involve or implicate McAfee Heating and Air at all. Moreover, in an effort to settle this dispute, Petitioner has supplied Respondent with documentation and evidence supporting these three claims asserted by Petitioner in the context of settlement negotiations. Accordingly, Respondent will not be prejudiced by the Board's denial of Respondent's Motion to Join Assignee.

## IV. CONCLUSION AND RELIEF REQUESTED

Respondent has failed to meet the requisite burden or demonstrate good cause for the requested reopening of discovery or how it would be prejudice by the Board's Denial of its Motion for Joinder. If Respondent is granted its Motion to Reopen Discovery, it will prejudice Petitioner and deny it a timely resolution of contested issues. Consequently, Petitioner respectfully requests that the Board DENY Respondent's Motion to Join Assignee and DENY Respondent's Motion to Reopen Discovery, and award Petitioner all such other and further relief as the Board deems just and appropriate.

Respectfully submitted,

CLOCKWORK IP, LLC

Date: November 3, 2014

Purvi J. Patel, *Attorney for Petitioner*
Haynes and Boone, LLP
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Phone: 214-651-5917
Facsimile: 214-200-0812
*patelp@haynesboone.com*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|---|
| Clockwork IP, LLC | § | Mark: COMFORT CLUB |
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| | § | In re Registration No. 3618331 |
| Barnaby Heating & Air | § | |
| | § | |
| | § | |
| *Respondent.* | § | |

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 3rd day of November, 2014, a copy of the foregoing *Petitioner's Objection and Brief in Opposition to Respondent's Motion to Join Assignee and Reopen Discovery* was served via email to the following party at *jcelum@celumlaw.com*:

Julie Celum Garrigue, Esq.
Celum Law Firm, PLLC

Purvi J. Patel

# EXHIBIT A

## Patel, Purvi J.

**From:** Patel, Purvi J.
**Sent:** Wednesday, July 09, 2014 10:01 AM
**To:** 'Julie Celum Garrigue'
**Subject:** For our Telephone Call - Comfortclub
**Attachments:** OHAC On Time Tech (2).pdf

Julie – This is for our discussion.

Attached is a flyer for my client's January 2008 course (discussing the Comfort Club offering) ... the course was also available to SGI- AirTime 500 members and we have documentation that Barnaby attended this seminar. To date Barnaby has still relied on his date of first use as January 22, 2008 -- that so happens to be the date for the course offering (Jan. 21 -23, 2008) in St. Louis. Note that my client has offered this course every year – promoting COMFORTCLUB.

We have strong evidence to support both cancellation and an infringement claim, so I hope we can have fruitful settlement discussions. I will call you in a few minutes.

**Purvi J. Patel**
Partner
purvi.patel@haynesboone.com

**Haynes and Boone, LLP**
2323 Victory Avenue
Suite 700
Dallas, TX 75219-7673

(t) 214.651.5917
(f) 214.200.0812

vCard | Bio | Website

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2. Virtually no comfort club memberships. The long term success of any company is decided by the clients you keep. If you are not locking in a minimum of 25% of the clients you visit, then you are giving away your future replacements.
3. Missing obvious opportunities. Too many techs look right past the thousands of dollars staring them in the face.

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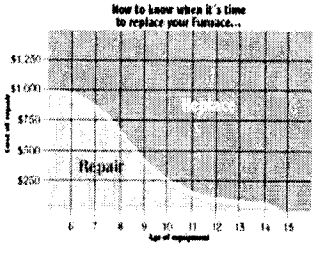


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Contact: _____
Address: _____
City, ST, Zip: _____
Phone: _____
Fax: _____
E-mail: _____

**Attendees** *(Please indicate 1st time or returning)*

1. _____ 1st time or returning
2. _____ 1st time or returning
3. _____ 1st time or returning
4. _____ 1st time or returning
5. _____ 1st time or returning
6. _____ 1st time or returning
7. _____ 1st time or returning

| Jan. 21-23 | Feb. 13-15 | Mar. 25-27 | May12-14 | June 2-4 | Aug.4-6 |
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**Hotel Requirements:** *** St. Louis** - **The Drury Plaza Hotel, 4th & Market, St Louis, MO, 63102.** *Reservations may be made by calling* ***1-800-DRURYINN or 1-314-231-3003***. To ensure the preferred room rate, be sure to advise the hotel that you are attending a Success Academy class, the name of the class and the date you will be arriving. **Reservations must be made at least 10 days prior to the start of the class.** Reservations less than 10 days from the start of class will be subject to availability and the regular hotel room rate. ****Las Vegas** – Hotel of your choice. Classes will be held at Quality's One Hour, 2951 Westwood Dr.,Las Vegas, NV 89109 – 1-702-731-1617. *****Canada** – Monte Carlo Inn – Vaughan Suites, 705 Applewood Cres, Vaughan, Ontario L4K 5W8, Canada – 1-905-761-7170. Class will be at SGI Canada, 665 Millway Ave, Unit 25, Concord ON Canada L4K 3T8 – 1-905-760-7887.

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**Cancellation Requirements for All SGI Members and Franchise Success Academy Students:** Cancellations made **30+ days prior to the first day of any class will receive a full refund.** Cancellations that **occur 8 – 29 days prior to the first day of any class will receive a class credit less $100 cancellation fee for first time and returning students.** Cancellations made **7 days or less prior to the first day of any class will receive a class credit less $400.00 cancellation fee for first time students, returning students forfeit their tuition and receive no class credit.** Cancellations **must be done** via website or in writing and faxed to **ATTN: Class Cancellation -Success Academy** at 314-657-4516. ***SGI Members*** - If a class is registered for but not attended and was not cancelled by the first day of class, the entire tuition is forfeited and no refund or credit will be issued. ***Franchise Core Class*** - If a core class is registered for but not attended and was not cancelled by the first day of class you will be charged a $400 fee by Franchise Headquarters. **By signing this form you "the member" authorize Success Academy to charge your credit card and/or bank account on file for the cancellation or no show fee.**

**By Authorizing this form you acknowledge that you have read, understand, and agree to the hotel, tuition, and cancellation requirements above. You also agree to allow Success Academy to process this registration by the investment option selected.**

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**Authorization (signature)** _____

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2. Virtually no comfort club memberships. The long term success of any company is decided by the clients you keep. If you are not locking in a minimum of 25% of the clients you visit, then you are giving away your future replacements.
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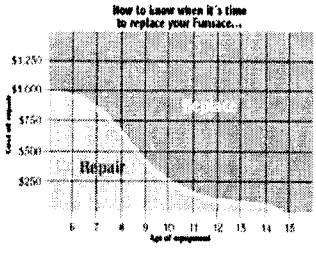


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3. _____ 1st time or returning
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   ABA Routing # _____ Account # _____
2. Charge My Credit Card
   Card # _____ Expiration Date: _____
   Circle One Visa Master Card Amer. Ex.
   Name on Card: (print) _____
3. Class Credit **(If available – Valid for 120 days ONLY)**
   Amount $_____
   Total Amount to Be Processed: $ _____

Affiliation **(circle one below)**

AT500 PSI ESI RSI
OHAC BEN MS

**Hotel Requirements:** *** St. Louis** - **The Drury Plaza Hotel, 4th & Market, St Louis, MO, 63102.** *Reservations may be made by calling* ***1-800-DRURYINN or 1-314-231-3003***. To ensure the preferred room rate, be sure to advise the hotel that you are attending a Success Academy class, the name of the class and the date you will be arriving. **Reservations must be made at least 10 days prior to the start of the class.** Reservations less than 10 days from the start of class will be subject to availability and the regular hotel room rate. ****Las Vegas** – Hotel of your choice. Classes will be held at Quality's One Hour, 2951 Westwood Dr.,Las Vegas, NV 89109 – 1-702-731-1617. *****Canada** – Monte Carlo Inn – Vaughan Suites, 705 Applewood Cres, Vaughan, Ontario L4K 5W8, Canada – 1-905-761-7170. Class will be at SGI Canada, 665 Millway Ave, Unit 25, Concord ON Canada L4K 3T8 – 1-905-760-7887.

**Tuition Requirements:** All tuition must be paid in full prior to the first day of class. Confirmations will be sent via e-mail immediately after a registration has been processed on the Success Academy Website. Success Academy is not responsible for hotel or travel reservations made prior to receiving confirmation of class registration.

**Cancellation Requirements for All SGI Members and Franchise Success Academy Students:** Cancellations made **30+ days prior to the first day of any class will receive a full refund**. Cancellations that **occur 8 – 29 days prior to the first day of any class will receive a class credit less $100 cancellation fee for first time and returning students**. Cancellations made **7 days or less prior to the first day of any class will receive a class credit less $400.00 cancellation fee for first time students, returning students forfeit their tuition and receive no class credit.** Cancellations **must be done** via website or in writing and faxed to **ATTN: Class Cancellation -Success Academy** at 314-657-4516. ***SGI Members*** - If a class is registered for but not attended and was not cancelled by the first day of class, the entire tuition is forfeited and no refund or credit will be issued. ***Franchise Core Class*** - If a core class is registered for but not attended and was not cancelled by the first day of class you will be charged a $400 fee by Franchise Headquarters. **By signing this form you "the member" authorize Success Academy to charge your credit card and/or bank account on file for the cancellation or no show fee.**

**By Authorizing this form you acknowledge that you have read, understand, and agree to the hotel, tuition, and cancellation requirements above. You also agree to allow Success Academy to process this registration by the investment option selected.**

**No registration form will be processed unless the form is complete and authorized!**

**Authorization (signature)** _____

**Please Fax Registration to: Success Academy at 314-657-4516 or**
**Register on-line at www.yoursuccessacademy.com**

# Acknowledgement of Non-Solicitation Policy

Success Academy provides training sessions and educational programs for members of AirTime 500, PSI, ESI, One Hour Air Conditioning, Mr. Sparky, and Benjamin Franklin Plumbing and their employees for the purpose of training and educating attendees within different trades and professions.

In order to provide the best training and educational programs and materials for our members, it has been and continues to be one of the Policies of Success Academy that no member (or its employees) may directly or indirectly use any of our sponsored training sessions, courses or classes and/or our Scoreboard or other information, tools, or reports as a vehicle, forum or resource to identify, solicit or hire another member's employee or any employee of Success Academy or its affiliates without first obtaining the written permission of the current employer.

This Policy includes, but is not limited to: employees who attend any Success Academy sessions, courses or programs; employees who may be identified through the use of any Scoreboard information or publications; any featured Success Speakers; and employees who are mentioned in any Success Academy materials or publications.

It has come to the attention of Success Academy that on occasion certain members have attempted to hire employees of other members during or after Success Academy's sponsored training sessions or have used the Success Academy Crown Champion Scoreboard and/or Success Group International Scoreboard to identify potential employees who are already employed by other members.

Obviously, such activities violate the Policies of Success Academy.

In order to insure that these types of activities do not occur in the future, we are requesting that each member indicate their agreement to abide by all of the Policies of Success Academy as may be announced from time to time (including without limitation the Policy noted above) in order to continue to use the resources and training provided by Success Academy.

While we do not anticipate that any member will violate this or any of our other Policies, Success Academy reserves the right to take appropriate action in the event that future violations of this Policy occur including without limitation:

1) First violation: up to and including one year suspension from any and all Success Academy courses.
2) Second violation: up to and including permanent expulsion from any and all Success Academy courses.

I acknowledge and understand the above terms and conditions and agree, on behalf of my company, myself, any co-owners and any employees, to abide by them.

Name (print): Charles Barnaby (Signature) C Barnaby

Company Name: Barnaby Heating & Air

Date: 3-17-08 Name of Class: Senior Sales Technician


™

This manual is published by Success Academy on behalf of Clockwork Home Services for One Hour Air Conditioning, Benjamin Franklin Plumbing, Mister Sparky and Success Group International for any of its affinity groups. To request additional copies or materials for this program, please contact Success Academy at 800.771.0107.

# EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|---|
| Clockwork IP, LLC | § | Mark: COMFORT CLUB |
| | § | |
| *Petitioner,* | § | |
| | § | |
| v. | § | Cancellation No. 92057941 |
| | § | In re Registration No. 3618331 |
| Barnaby Heating & Air | § | |
| | § | |
| | § | |
| *Respondent.* | § | |

## PETITIONER'S FIRST SET OF INTERROGATORIES

Pursuant to 37 C.F.R. §§ 2.116(a) and 2.120, Fed. R. Civ. P. 33, and TBMP §§ 403.02 and 408.01, Petitioner Clockwork IP, LLC herewith serves the following interrogatories to Respondent Barnaby Heating & Air and requests that Respondent respond fully and separately in writing under oath by a duly authorized officer or agent within thirty five (35) days after service. Each interrogatory shall be deemed continuing in nature, and Respondent shall update, revise, and otherwise keep current, any information provided in response to each interrogatory as facts or circumstances become known or change, in accordance with Fed. R. Civ. P. 26(e). Respondent shall send the requested responses to Petitioner's Counsel, Purvi J. Patel, Haynes and Boone, LLP, 2323 Victory Ave., Suite 700, Dallas, TX 75219.

## DEFINITIONS

The following definitions apply to all of Opposer's discovery requests:

A. "SGI" refers to Success Group International, an entity that was related to Petitioner but was recently sold. SGI includes a family of organizations including AirTime 500, Plumbers' Success International, Electricians' Success International, and Roofers' Success International.

B. "AirTime 500" or "AirTime" refers to an SGI entity that is dedicated to helping independent HVAC contractors succeed by providing a comprehensive set of operational and knowledge tools, including pricing systems, rebates, incentive systems, and training and networking opportunities.

C. "Success Day" and "Success Academy" refers to a periodic events, training seminars, and workshops for AirTime 500 Contractors. CONGRESS franchise events, SGI EXPO events, BRAND DOMINANCE events, and Senior Tech events refer to periodic events, training seminars, and workshops sponsored and/or held by Petitioner or its affiliates.

D. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

E. "Document" is synonymous in meaning and equal in scope to the use of this term in Federal Rule of Civil Procedure 34(a), and means any and all information including electronically stored information in tangible or other form, whether printed, typed, recorded, computerized, filmed, reproduced by any process, or written or produced by hand, and whether an original, draft, master, duplicate or copy, or notated version thereof, that is in Respondent's possession, custody, or control. A draft or non-identical copy is a separate document within the meaning of this term.

F. "Person" is defined as any natural person or any business, legal, or governmental entity or association.

G. "Identify," when used with respect to a person, shall mean:

a. the person's full name and legal status;

b. the person's last known residence or business address;

c. the person's last known telephone number; and

d. the person's last known job title, job duties and company affiliation.

H. "Identify," when used with respect to a document or thing, shall mean:

a. the name and business address of each person who prepared and/or authored and/or signed the document and the identity of the persons who can authenticate it;

b. the name and business address of each person who edited, corrected, revised, or amended the document;

c. the name and business address of each person who entered any initials or

comment or notation on such document;

d. the title and date of the document;

e. its present location and the person having present custody of the document;

f. the general nature of the document (e.g., letter, memorandum, photograph, computer printout, model, etc.);

g. the general subject matter of the document;

h. the place where any negotiations or conversations leading up to the preparation or execution of the document took place;

i. the identity of each person to whom it was addressed or distributed;

j. if the document is a printed publication, the name of the publication in which the document was printed, the volume number and/or issue number of the publication, and page numbers of the publication; and

k. for each document you contend is privileged or otherwise excludable from discovery, a statement as to the basis for such a claim of privilege or other grounds for exclusion.

I. "Identify," when used with respect to a communication, shall mean:

a. if the communication is written, the identity of the document(s) in which the communication was made, and the identity of all documents that refer to, relate to, or reflect such communication, or that were discussed, displayed, or used during the communication; and

b. if the communication was oral, the identity of persons participating in the communication, the date and place where it occurred, its substance, and each person who was present when such statement or communication was made.

J. The term "state" or "state all facts" means to state all facts discoverable under Fed. R. Civ. P. 26(b) that are known to Respondent. When used in reference to a contention, "state," "state all

facts," "identify all documents," and "identify all communications" shall include all facts, documents, and communications negating as well as supporting the contention.

K. "Referring" or "relating to" means constituting, comprising, concerning, regarding, mentioning, containing, setting forth, showing, disclosing, describing, explaining, summarizing, evidencing, discussing, either directly or indirectly, in whole or in part, and should be given the broadest possible scope consistent with the Federal Rules of Civil Procedure.

L. "Commerce" signifies commerce that the U.S. Congress may lawfully regulate. The phrase "use in commerce" is defined in Section 45 of the Trademark Act, 15 U.S.C. § 1127, to mean that a mark shall be deemed to be in use in commerce "(1) on goods when – (A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and (B) the goods are sold or transported in commerce, and (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services."

M. "Respondent's Mark" means the alleged mark COMFORTCLUB as shown in Respondent's U.S. Registration No. 3,618,331, unless otherwise stated. "Respondent's services" means the services identified in Respondent's U.S. Registration No. 3,618,331, unless otherwise stated.

N. "Petitioner's Mark" means the COMFORTCLUB mark, used by Petitioner at least as early as 2006, in connection with electrical services, plumbing, and heating and air conditioning services, and later covered by U.S. Application Serial No. 85/880,911. Unless otherwise stated. "Petitioner's services" means the services identified in Respondent's U.S. Application Serial No. 85/880,911.

O. The terms "all" and "each" shall be constructed as all and each.

P. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

Q. The use of the singular form of any word shall include within its meaning the plural form of the word, and vice versa.

R. The use of the masculine form of a pronoun shall include also within its meaning the feminine form of the pronoun so used, and vice versa.

S. The use of any tense of any verb shall include also within its meaning all other tenses of the verb so used.

## INSTRUCTIONS

1. Whenever the interrogatories call for the identification of a document, Respondent may, in lieu of such identification, produce such document, marked with the number of the interrogatory to which it is responsive, at the time Respondent serves his answers to these interrogatories.

2. No part of an interrogatory shall be left unanswered merely because an objection is interposed to another part of the interrogatory.

3. Where an objection is made to any interrogatory or any document request, or sub-part thereof, under Fed. R. Civ. P. 34, state with specificity all grounds for the objection. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, will be waived.

4. Where a claim of privilege or work product is asserted in objecting to an interrogatory or document request, or sub-part thereof, and an answer is not provided on the basis of such assertion, the attorney or party asserting the privilege shall in the objection to the interrogatory or document request, or sub-part thereof, identify the nature of the privilege being claimed; and provide the following information, unless divulgence of the information would cause disclosure of the allegedly privileged information:

(a) For documents:

i. the type of document;

ii. general subject matter of the document;

iii. the date of the document; and

iv. such other information as is sufficient to identify the document for a

subpoena duces tecum, including the author of the document, each addressee of the document, and the relationship of the author to the addressee.

(b) For oral communications:

i. the name of the person making the communication, the names of persons present while the communication was made, and the relationship of these persons;

ii. the date and place of communication; and

iii. the general subject matter of the communication.

## INTERROGATORIES

**INTERROGATORY NO. 1:**

Describe in detail how Respondent's Mark was first conceived of by Respondent.

**INTERROGATORY NO. 2:**

State in detail the reasons for Respondent's selection of COMFORTCLUB and the filing of U.S. Registration No. 3,618,331 therefor, the date that Respondent's Mark was selected and cleared, and identify all persons involved in the selection and clearance of Respondent's Mark.

**INTERROGATORY NO. 3:**

State Respondent's annual expenditures in developing and marketing COMFORTCLUB.

**INTERROGATORY NO. 4:**

Describe all documents supporting or negating Respondent's priority and ownership of COMFORTCLUB.

**INTERROGATORY NO. 5:**

List and describe all Petitioner, SGI, or AirTime events, including without limitation, Success Day and Success Academy sessions, CONGRESS franchise events, SGI EXPO events, BRAND DOMINANCE events, Senior Tech events, and any similar events attended by Respondent since 2006.

**INTERROGATORY NO. 6:**

Describe Respondent's relationship with Petitioner, SGI, and AirTime 500.

**INTERROGATORY NO. 7:**

Describe and list all agreements between Respondent and Petitioner, Respondent and SGI, Respondent and AirTime 500, including without limitation all Acknowledgements of Non-Solicitation Policy or Confidentiality Agreements executed by Respondent.

**INTERROGATORY NO. 8:**

Describe all goods and services with which Respondent's Mark has been, is intended to be, or is currently used and, for each good or service identified:

(a) state the date of first use anywhere and the date of first use in commerce and the nature of that first use in commerce;

(b) describe any periods of non-use;

(c) describe the distribution system for each such good or service including the channels of trade in which such good or service is or will be distributed;

(d) describe the methods by which Respondent has advertised or promoted the sale of each good or service, including, without limitation, the types of media in which such advertising and promotion has been conducted;

(e) identify and describe the geographic scope of any advertising and sales for each good or service provided;

(f) identify all instances of use of Respondent's Mark by Respondent or Respondent's licensees, including use in marketing materials, internal materials, and Respondent's websites.

**INTERROGATORY NO. 9:**

Describe all facts and identify all documents and things relating to and showing Respondent's use of Respondent's Mark in commerce before and after Mr. Charles Barnaby's execution of the Success Academy "Acknowledgement of Non-Solicitation Policy" dated March 17, 2008.

**INTERROGATORY NO. 10:**

Identify and describe the types of customers to whom Respondent has provided or is providing COMFORTCLUB services and, for each type of customer:

(a) indicate the approximate fractional or percentage dollar volume of sales to each type of customer; and

(b) state the method by which Respondent has provided or is providing services identified with Respondent's Mark, including without limitation, channels of trade utilized or being utilized by Respondent.

**INTERROGATORY NO. 11:**

State the annual revenues generated in connection with Respondent's services offered under Respondent's Mark from the date of first use to present.

**INTERROGATORY NO. 12:**

State whether any search, inquiry, investigation, or marketing survey has been or is being conducted relating to the availability, registrability, or enforceability of Respondent's Mark and, if so, for each identify all documents relating to the search or investigation including, but not limited to, each report referring to or reflecting the search or investigation.

**INTERROGATORY NO. 13:**

Describe in detail all instances in which Respondent has received objections or misdirected inquiries regarding its use and/or application for Respondent's Mark.

**INTERROGATORY NO. 14:**

Describe in detail all facts and identify all documents and things relating to any alleged association between Petitioner and Respondent.

**INTERROGATORY NO. 15:**

Identify any members of the public known to Respondent to have been or who may have been confused with respect to Respondent's Mark as a result of, or with respect to, the use by Petitioner of the mark COMFORTCLUB; and:

(a) Describe each such instance of confusion; and

(b) Identify any persons who can testify regarding each such instance.

**INTERROGATORY NO. 16:**

Identify each person that was a potential customer of Respondent who would have received any advertising or marketing material displaying Respondent's Mark.

**INTERROGATORY NO. 17:**

Describe Respondent's present or future plans to market goods and/or services offered under Respondent's Mark beyond the scope of that which Respondent currently offers.

**INTERROGATORY NO. 18:**

State the date of, and describe in detail the circumstance of, when you first became aware of Petitioner's Mark.

**INTERROGATORY NO. 19**

State all facts on which Respondent relies in support of the allegation in its application for U.S. Registration No. 3,618,331 that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive...."

**INTERROGATORY NO. 20:**

State all facts on which Respondent relies in support of the allegation in its application for U.S. Registration No. 3,618,331 for COMFORTCLUB that Respondent was the rightful "owner of the trademark/service mark sought to be registered."

**INTERROAGTORY NO. 21:**

Identify all interactions Respondent had with Petitioner or Petitioner's legal representatives prior to the filing of its application for U.S. Registration No. 3,618,331.

**INTERROGATORY NO. 22:**

Describe all facts and identify all documents and things upon which Respondent bases its denials in

Respondent's Answer to the Petition to Cancel in this proceeding.

**INTERROGATORY NO. 23:**

Describe all facts and identify all documents and things upon which Respondent bases its Affirmative Defenses in Respondent's Answer to the Petition to Cancel in this proceeding.

**INTERROGATORY NO. 24:**

Identify all persons having knowledge of the denials asserted in Respondent's Answer to the Petition to Cancel, and describe the substance of those persons' knowledge.

**INTERROGATORY NO. 25:**

Identify all persons having knowledge of allegations and facts which you asserted in these interrogatory responses and describe the substance of those persons' knowledge.

**INTERROGATORY NO. 26:**

Identify each person whom Respondent may call to testify on his behalf in this Cancellation.

**INTERROGATORY NO. 27:**

Describe all facts and identify all documents and things relating to and supporting Respondent's Affirmative Defenses in its Answer to Petitioner's Petition to Cancel.

Identify all documents and things on which Respondent intends to rely in this Cancellation.

Respectfully submitted,

CLOCKWORK IP, LLC

Date: June 4, 2014

Purvi J. Patel, *Attorney for Petitioner*
Haynes and Boone, LLP
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Phone: 214-651-5917
Facsimile: 214-200-0812
*patelp@haynesboone.com*

File: 46889.81

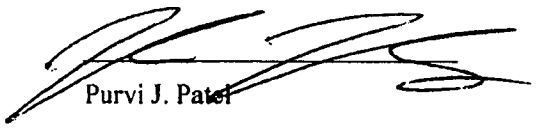
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|---|
| Clockwork IP, LLC | § | Mark: COMFORT CLUB |
| | § | |
| *Petitioner,* | § | |
| | § | |
| v. | § | Cancellation No. 92057941 |
| | § | In re Registration No. 3618331 |
| Barnaby Heating & Air | § | |
| | § | |
| | § | |
| *Respondent.* | § | |

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 4th day of June, 2014, a copy of the foregoing *Petitioner's First Set of Interrogatories to Respondent* was served via first class mail, postage prepaid, on the following:

Julie Celum Garrigue, Esq.
Celum Law Firm, PLLC
11700 Preston Rd.,
Suite 660, PMB 560
Dallas, TX 75230



haynesboone

June 4, 2014

***Via First Class Mail***

Julie Celum Garrigue
Celum Law Firm, PLLC
11700 Preston Rd.,
Suite 660, PMB 560
Dallas, TX 75230

Re: *Clockwork IP, LLC v. Barnaby Heating & Air, LLC*
Cancellation No.: 92057941
Our Ref. No.: 46889.81

Dear Julie:

Enclosed please find Petitioner's First Set of Interrogatories, Petitioner's First Set of Requests for the Production of Documents and Things, and Petitioner's First Set of Requests for Admissions To Respondent in connection with the above Cancellation.

Sincerely,

Purvi J. Patel
Direct phone: (214) 651-5917
Direct fax: (214) 200-0853
*purvi.patel@haynesboone.com*

cc: Clockwork IP, LLC



Haynes and Boone, LLP
Attorneys and Counselors
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Phone: 214.651.5000
Fax: 214.651.5940
www.haynesboone.com

# EXHIBIT C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|---|
| Clockwork IP, LLC | § | Mark: COMFORT CLUB |
| | § | |
| *Petitioner,* | § | |
| | § | |
| v. | § | Cancellation No. 92057941 |
| | § | In re Registration No. 3618331 |
| Barnaby Heating & Air | § | |
| | § | |
| | § | |
| *Respondent.* | § | |

**PETITIONER'S FIRST SET OF REQUESTS**
**FOR THE PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Petitioner Clockwork IP, LLC herewith serves this First Set of Requests for Production of Documents and Things on Respondent Barnaby Heating & Air and requests that Respondent produce the requested documents at the offices of Petitioner's counsel, Purvi J. Patel, Haynes and Boone, L.L.P., located at 2323 Victory Avenue, Suite 700, Dallas, Texas 75219 within thirty-five (35) days of service.

For the convenience of the Board and the parties, Petitioner requests that each document request be quoted in full immediately preceding the response.

**DEFINITIONS**

The following definitions apply to, and are deemed to be incorporated into, each of the requests for production herein:

A. "SGI" refers to Success Group International, an entity that was related to Petitioner but was recently sold. SGI includes a family of organizations including AirTime 500, Plumbers' Success International, Electricians' Success International, and Roofers' Success International.

B. "AirTime 500" or "AirTime" refers to an SGI entity that is dedicated to helping independent HVAC contractors succeed by providing a comprehensive set of operational and knowledge tools, including pricing systems, rebates, incentive systems, and training and networking opportunities.

C. "Success Day" and "Success Academy" refers to a periodic events, training seminars, and workshops for AirTime 500 Contractors. CONGRESS franchise events, SGI EXPO events, BRAND DOMINANCE events, and Senior Tech events refer to periodic events, training seminars, and workshops sponsored and/or held by Petitioner or its affiliates.

D. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

E. "Document" is synonymous in meaning and equal in scope to the use of this term in Federal Rule of Civil Procedure 34(a), and means any and all information including electronically stored information in tangible or other form, whether printed, typed, recorded, computerized, filmed, reproduced by any process, or written or produced by hand, and whether an original, draft, master, duplicate or copy, or notated version thereof, that is in Respondent's possession, custody, or control. A draft or non-identical copy is a separate document within the meaning of this term.

F. "Person" is defined as any natural person or any business, legal, or governmental entity or association.

G. "Referring" or "relating to" means constituting, comprising, concerning, regarding, mentioning, containing, setting forth, showing, disclosing, describing, explaining, summarizing, evidencing, discussing, either directly or indirectly, in whole or in part, and should be given the broadest possible scope consistent with the Federal Rules of Civil Procedure.

H. "Commerce" signifies commerce that the U.S. Congress may lawfully regulate. The phrase "use in commerce" is defined in Section 45 of the Trademark Act, 15 U.S.C. § 1127, to mean that a mark shall be deemed to be in use in commerce "(1) on goods when – (A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and (B) the goods are sold or transported in commerce, and (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the

services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services."

I. "Respondent's Mark" means the alleged mark COMFORTCLUB as shown in Respondent's U.S. Registration No. 3,618,331, unless otherwise stated. "Respondent's services" means the services identified in Respondent's U.S. Registration No. 3,618,331, unless otherwise stated.

J. "Petitioner's Mark" means the COMFORTCLUB mark, used by Petitioner at least as early as 2006, in connection with electrical services, plumbing, and heating and air conditioning services, and later covered by U.S. Application Serial No. 85/880,911. Unless otherwise stated. "Petitioner's services" means the services identified in Respondent's U.S. Application Serial No. 85/880,911.

K. The terms "all" and "each" shall be constructed as all and each.

L. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

M. The use of the singular form of any word shall include within its meaning the plural form of the word, and vice versa.

N. The use of the masculine form of a pronoun shall include also within its meaning the feminine form of the pronoun so used, and vice versa.

O. The use of any tense of any verb shall include also within its meaning all other tenses of the verb so used.

## INSTRUCTIONS

1. No part of a request shall be left unanswered merely because an objection is interposed to another part of the request.

2. Where an objection is made to any document request, or sub-part thereof, under Fed. R. Civ. P. 34, state with specificity all grounds for the objection. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, will be waived.

3. Where a claim of privilege or work product is asserted in objecting to a document request or sub-part thereof, and an answer is not provided on the basis of such assertion, the attorney or party asserting the privilege shall in the objection to the interrogatory or document request, or sub-part thereof, identify the nature of the privilege being claimed; and provide the following information, unless divulgence of the information would cause disclosure of the allegedly privileged information:

(a) the type of document;

(b) general subject matter of the document;

(c) the date of the document; and

(d) such other information as is sufficient to identify the document for a subpoena duces tecum, including the author of the document, each addressee of the document, and the relationship of the author to the addressee.

**DOCUMENTS AND THINGS TO BE PRODUCED**

**REQUEST FOR PRODUCTION NO. 1:**

All documents and things identified in Respondent's responses to *Petitioner's First Set of Interrogatories to Respondent* served in connection with this Cancellation.

**REQUEST FOR PRODUCTION NO. 2:**

All documents and things not identified in Respondent's responses to *Petitioner's First Set of Interrogatories to Respondent* which nonetheless were reviewed or relied upon by Respondent in preparing answers to said Interrogatories, or which support Respondent's responses thereto.

**REQUEST FOR PRODUCTION NO. 3:**

All documents and things relating to the following:

(a) Respondent's creation, selection, development, clearance, approval, and adoption of Respondent's Mark, including all documents relating to any trademark searches which were conducted by or for Respondent in connection with Respondent's Mark, the results thereof, and samples of any marks or names considered and rejected.

(b) The content or result of any meeting or discussion at which Respondent's consideration,

acquisition, selection, approval, or adoption of Respondent's Mark were discussed;

(c) Further investigations conducted by or on behalf of Respondent into the current status of any marks uncovered by trademark searches which were conducted by or for Respondent in connection with Respondent's Mark;

(d) Information, notice, or opinion(s) concerning conflict or potential conflict associated with your adoption, use, or registration of Respondent's Mark;

(e) All communications in which a person has recommended or cautioned against Respondent's acquisition, selection, development, adoption, or use of Respondent's Mark; and

(f) All information, notices, or opinions concerning the availability of Respondent's Mark for use or registration.

**REQUEST FOR PRODUCTION NO. 4:**

All documents and things relating to communications issued or received by Respondent relating to Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 5:**

All documents and things relating to communications issued or received by Respondent relating to Petitioner's Marks.

**REQUEST FOR PRODUCTION NO. 6:**

All documents and things relating to the first use anywhere and the first use in commerce of Respondent's Mark by or on behalf of Respondent.

**REQUEST FOR PRODUCTION NO. 7:**

All documents and things relating to or identifying the nature of Respondent's business, including all products and services ever offered by Respondent.

**REQUEST FOR PRODUCTION NO. 8:**

Representative examples – such as products, labels, packaging, tags, brochures, advertisements, promotional items, point of sale displays, websites, informational literature, stationery, invoices, or

business cards – showing each and every variation in the form of Respondent's Mark which Respondent (or other parties with Respondent's consent) has used, uses, or plans to use depicting Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 9:**

All documents and things relating to any plans which Respondent has to expand the types of goods or services currently offered under Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 10:**

All documents and things relating to the types of customers to whom Respondent has provided or is providing products or services identified by Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 11:**

All documents supporting or negating Respondent's priority and ownership of COMFORTCLUB, including all documents and things relating to the first use anywhere and the first use in commerce of Petitioner's Mark.

**REQUEST FOR PRODUCTION NO. 12:**

All agreements and policies between Petitioner and Respondent, Respondent and SGI, and Respondent and AirTime 500.

**REQUEST FOR PRODUCTION NO. 13:**

All written communications between Petitioner and Respondent, Respondent and SGI, and Respondent and AirTime 500.

**REQUEST FOR PRODUCTION NO. 14:**

All documents and things relating to Respondent's attendance of any Success Day or Success Academy events, CONGRESS franchise events, SGI EXPO events, BRAND DOMINANCE events, and Senior Tech events, including without limitation all 2008 events and sessions.

**REQUEST FOR PRODUCTION NO. 15:**

All documents and things relating to Respondent's past, present, and future marketing plans and methods for products or services identified by Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 16:**

All documents and things relating to your distribution of and trade channels for the services identified by Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 17:**

All documents and things relating to communications between Respondent and third parties concerning the advertisement or promotion of Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 18:**

All documents and things relating to communications between Respondent and any third party, including consumers, concerning Respondent's Mark or Petitioner's Mark.

**REQUEST FOR PRODUCTION NO. 19:**

All documents and things relating to expenses for advertisement or promotion of Respondent's Mark, including all documents that summarize or tabulate existing or projected advertising expenditures and expenses associated with Respondent's use of Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 20:**

All documents and things relating to communications between Respondent and any third party, including consumers and Petitioner franchisees, concerning products and services on which Respondent uses, or has used, the term COMFORTCLUB in commerce.

**REQUEST FOR PRODUCTION NO. 21:**

All documents and things relating to Petitioner's Marks, including all documents and things relating to any search, inquiry, investigation, or marketing survey that has been, is being, or will be conducted relating to Petitioner's Mark.

**REQUEST FOR PRODUCTION NO. 22:**

All documents and things relating to any possibility of confusion, mistake, or deception as to the source of original or sponsorship of any product or service arising out of use of Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 23:**

All documents and things relating to any likelihood of confusion, deception or mistake between

Respondent's Mark and Petitioner's Marks, including Petitioner's Mark as used by licensee.

**REQUEST FOR PRODUCTION NO. 24:**

All documents and things relating to any instances of actual confusion between Respondent's Mark and Petitioner's Marks, including but not limited to documents and things relating to misdirected mail, e-mail, or telephone calls.

**REQUEST FOR PRODUCTION NO. 25:**

All documents and things relating to any instances of actual confusion regarding a connection between Petitioner or Petitioner's services and Respondent.

**REQUEST FOR PRODUCTION NO. 26:**

All documents and things relating to Respondent's communications with third parties regarding this proceeding.

**REQUEST FOR PRODUCTION NO. 27:**

All documents and things relating to any communications between Respondent and Petitioner concerning Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 28:**

All documents and things relating to any communications between Respondent and any other party who has used or owns any rights in any names or marks, including design marks, which are comprised of or include the words COMFORT or CLUB.

**REQUEST FOR PRODUCTION NO. 29:**

All documents and things relating to the strength or distinctiveness of Respondent's Mark or Petitioner's Mark.

**REQUEST FOR PRODUCTION NO. 30:**

All documents and things relating to any application(s) submitted by Respondent to register, maintain, or modify Respondent's Mark on any trademark register worldwide, and any registration(s) issued as a result thereof.

**REQUEST FOR PRODUCTION NO. 31:**

All documents and things identified in *Respondent's Initial Disclosures.*

**REQUEST FOR PRODUCTION NO. 32:**

All documents and things not identified in *Respondent's Initial Disclosures* which nonetheless were reviewed or relied upon in preparing *Respondent's Initial Disclosures.*

**REQUEST FOR PRODUCTION NO. 33:**

All documents showing or relating to Respondent's awareness of, and first dates of awareness of, Petitioner's Mark.

**REQUEST FOR PRODUCTION NO. 34:**

All documents and things showing use of the term COMFORTCLUB in commerce by Respondent in connection with the sale, offer for sale, and/or distribution of any product or service at any time.

**REQUEST FOR PRODUCTION NO. 35:**

All documents relating to or detailing Respondent's selection of Respondent's Mark and the decision to file a U.S. Trademark application for COMFORTCLUB.

**REQUEST FOR PRODUCTION NO. 36:**

All documents relating to the goods and services with which Respondent's Mark has been, is intended to be, or is currently used.

**REQUEST FOR PRODUCTION NO. 37:**

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraph 8 of Petitioner's Petition to Cancel in this proceeding that "Respondent, Barnaby Heating and Air, has been an AirTime member and licensee of Petitioner since August 21, 2007."

**REQUEST FOR PRODUCTION NO. 38:**

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraph 22 of Petitioner's Petition to Cancel in this proceeding that "Petitioner introduced its COMFORTCLUB mark at CONGRESS in 2006 ... and has come to be associated with the maintenance plans offered by franchisees and member affiliates for the performance and delivery of home heating, air conditioning and

ventilation services."

**REQUEST FOR PRODUCTION NO. 39:**

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraph 23 of Petitioner's Petition to Cancel in this proceeding that "Petitioner has priority based upon its prior use and contractual ownership of Petitioner's 'COMFORTCLUB' Mark."

**REQUEST FOR PRODUCTION NO. 40:**

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraph 23 of Petitioner's Petition to Cancel in this proceeding that Respondent's COMFORTCLUB mark is virtually identical to Petitioner's COMFORTCLUB in sound, appearance, connotation, and form.

**REQUEST FOR PRODUCTION NO. 41:**

All documents and things upon which Respondent bases its denial of Petitioner's allegation in paragraphs 36 and 37 of Petitioner's Petition to Cancel in this proceeding.

**REQUEST FOR PRODUCTION NO. 42:**

All documents and things upon which Respondent bases its other denials and admissions in Respondent's Answer to the Petition to Cancel in this proceeding.

**REQUEST FOR PRODUCTION NO. 43:**

All documents and things upon which Respondent bases its First Affirmative Defense in paragraph 41 – Failure to State a Claim.

**REQUEST FOR PRODUCTION NO. 44:**

All documents and things upon which Respondent bases its Second Affirmative Defense in paragraph 42 – Priority.

**REQUEST FOR PRODUCTION NO. 45:**

All documents and things upon which Respondent bases its Third Affirmative Defense in paragraph 43 – Fair Use.

**REQUEST FOR PRODUCTION NO. 46:**

All documents and things upon which Respondent bases its Fourth Affirmative Defense in paragraph 44 –

Statute of Limitations.

**REQUEST FOR PRODUCTION NO. 47:**

All documents and things upon which Respondent bases its Fifth Affirmative Defense in paragraph 45 – Estoppel.

**REQUEST FOR PRODUCTION NO. 48:**

All documents and things upon which Respondent bases its Sixth Affirmative Defense in paragraph 46 – Laches.

**REQUEST FOR PRODUCTION NO. 49:**

All documents and things upon which Respondent bases its Seventh Affirmative Defense in paragraph 47 – Acquiescence.

**REQUEST FOR PRODUCTION NO. 50:**

All documents and things upon which Respondent bases its Eighth Affirmative Defense in paragraph 48 – No Liability.

**REQUEST FOR PRODUCTION NO. 51:**

All documents and things upon which Respondent bases its Ninth Affirmative Defense in paragraph 49 – No Standing.

**REQUEST FOR PRODUCTION NO. 52:**

All documents and things upon which Respondent bases its Tenth Affirmative Defense in paragraph 50 – Non-Use and Abandonment.

**REQUEST FOR PRODUCTION NO. 53:**

All documents and things upon which Respondent bases its Eleventh Affirmative Defense in paragraph 51.

**REQUEST FOR PRODUCTION NO. 54:**

All documents and things identified in Respondent's Answer to the Petition to Cancel in this proceeding.

**REQUEST FOR PRODUCTION NO. 55:**

All documents referring or relating to Respondent's uses of any term comprised of or containing

"COMFORT" and/or "CLUB" including but not limited to use as the common commercial name for a type of product or service, to describe a feature or characteristic of any product or service, as a verb, or in lowercase letters.

**REQUEST FOR PRODUCTION NO. 56:**

All documents and things sufficient to identify the particular market or market segment in which Respondent's services compete, and all competitors.

**REQUEST FOR PRODUCTION NO. 57:**

Representative examples of advertising and promotional materials in each media used (e.g., print, television, radio, internet, direct mail, billboards) featuring, displaying, or containing Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 58:**

Representative samples of all websites, advertisements, catalogs, brochures, posters, flyers, and any other printed or online promotional materials that have ever been used by Respondent in connection with Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 59:**

Documents sufficient to show all media (e.g., print, television, radio, internet, direct mail, billboards) in which Respondent has advertised or promoted Respondent's Mark, including but not limited to media schedules and advertising plans.

**REQUEST FOR PRODUCTION NO. 60:**

Documents sufficient to show the type, identity, and geographic distribution of all media in which Respondent has advertised or intends to advertise goods and services using Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 61:**

All press releases, articles, and clippings relating to or commenting upon Respondent's Mark or Respondent's services.

**REQUEST FOR PRODUCTION NO. 62:**

Documents sufficient to show all forms in which Respondent has depicted, displayed, or used Respondent's Mark, including but not limited to all designs, stylizations, and/or logos.

**REQUEST FOR PRODUCTION NO. 63:**

To the extent not covered by other requests, all documents referring or relating to investigations, searches, research focus groups, reports, surveys, polls, studies, searches, and opinions conducted by or for Respondent relating or referring to Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 64:**

All documents referring or relating to any objections Respondent has received concerning his use and/or registration of Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 65:**

Documents sufficient to identify the annual sales revenues in units from sales of goods and services by Respondent under Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 66:**

Documents sufficient to identify any advertising expenses incurred by Respondent in connection with use of Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 67:**

Documents sufficient to identify the annual advertising and promotional expenditures for Respondent's Goods from the first use of Respondent's Mark to the present.

**REQUEST FOR PRODUCTION NO. 68:**

All documents referring or relating to Respondent's annual expenditures for developing and marketing Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 69:**

All documents referring or relating to judicial or administrative proceedings in any forum referring or relating to Respondent's Mark and/or Respondent's Goods, other than this proceeding.

**REQUEST FOR PRODUCTION NO. 70:**

All documents referring or relating to all adversarial proceedings to which Respondent has been a party, including domain name disputes, inter-party proceedings before the U.S. Trademark Trial & Appeal Board or other nation's trademark offices, or lawsuits filed in a court anywhere in the world.

**REQUEST FOR PRODUCTION NO. 71:**

All documents referring or relating to agreements Respondent has entered into (oral or written) relating to Respondent's Mark, including but not limited to development agreements, license agreements, co-branding agreements, consent agreements, coexistence agreements, assignments, settlement agreements, and advertising agreements.

**REQUEST FOR PRODUCTION NO. 72:**

All documents and things sufficient to identify all uses of Respondent's Mark by Respondent or Respondent's licensees, including use in marketing materials, internal materials, and Respondent's websites.

**REQUEST FOR PRODUCTION NO. 73:**

All documents and things sufficient to identify the meaning of Respondent's Mark and the messages that Respondent intends to convey to consumers with respect to Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 74:**

All documents and things sufficient to identify the ways in which the type of consumer to whom Respondent has been marketing or will market its goods and services under Respondent's Mark is different from the type of consumer to whom Respondent believes Petitioner is marketing its goods and services.

**REQUEST FOR PRODUCTION NO. 75:**

All documents referring or relating to all known third-party uses of terms comprised of or containing "Comfort" and "Club" in connection with HVAC or any other goods or services offered by Respondent, or use of "comfortclub" as the common commercial name for a type of product or service, to describe a feature or characteristic of any product or service, as a verb, or in lowercase letters.

**REQUEST FOR PRODUCTION NO. 76:**

All documents relied upon by Respondent to support the allegation in its application for U.S. Registration No. 3,618,331 that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near

resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive...."

**REQUEST FOR PRODUCTION NO. 77:**

All documents relied upon by Respondent to support the allegation in its application for U.S. Registration No. 3,618,331 that Respondent was the rightful "owner of the trademark/service mark sought to be registered."

**REQUEST FOR PRODUCTION NO. 78:**

All documents referring or relating to any and all interactions Respondent had with Petitioner or Petitioner's legal representatives prior to the filing of its application for U.S. Registration No. 3,618,331.

**REQUEST FOR PRODUCTION NO. 79:**

All documents referring or relating to Respondent's reasons for selecting the mark "COMFORTCLUB" as a compounded or unitary mark.

**REQUEST FOR PRODUCTION NO. 80:**

All documents referring or relating to the similarity of Respondent's COMFORTCLUB mark and Petitioner's COMFORTCLUB mark.

**REQUEST FOR PRODUCTION NO. 81:**

All documents referring or relating to the priority and seniority of Petitioner's COMFORTCLUB mark.

**REQUEST FOR PRODUCTION NO. 82:**

All documents referring or relating to the similarity in the services listed in the Respondent's Mark and the services marketed or sold by Petitioner under Petitioner's Mark.

**REQUEST FOR PRODUCTION NO. 83:**

All documents and things relating to Respondent's document retention and destruction policies or guidelines, if any, which may relate to documents covered by any request herein.

**REQUEST FOR PRODUCTION NO. 84:**

All documents Respondent intends to introduce into evidence in this proceeding.

**REQUEST FOR PRODUCTION NO. 85:**

All documents on which Respondent intends to rely during the testimony period in support of Respondent's case, and all other documents relating to such documents.

**REQUEST FOR PRODUCTION NO. 86:**

For each fact witness whom Respondent intends to call in this proceeding, please produce the following:

(a) A resume or employment history;

(b) A written report containing a complete statement of all of his or her opinions and conclusions relevant to this case and the grounds therefor; and

(c) Other information considered by the witness in forming his or her opinions.

**REQUEST FOR PRODUCTION NO. 87:**

All documents and things supporting cancellation of Respondent's Mark because Respondent perpetrated fraud on the USPTO.

**REQUEST FOR PRODUCTION NO. 88:**

All documents and things supporting Respondent's position that it did not perpetrate fraud on the USPTO with respect to Respondent's Mark.

**REQUEST FOR PRODUCTION NO. 89:**

All documents and things relating to each expert witness Respondent has engaged in connection with this proceeding, including but not limited to, resumes, curriculum vitae, references, promotions, matters, opinions, reports, exhibits, and communications concerning any issue presented or considered herein.

**REQUEST FOR PRODUCTION NO. 90:**

Any written report, memorandum, opinion, or other written documents and things regarding either Respondent's Mark or Petitioner's Marks that was prepared by any expert witness, regardless of whether Respondent presently intends to call such expert witness in this proceeding.

Respectfully submitted,

CLOCKWORK IP, LLC

Date: June 4, 2014

Purvi J. Patel, *Attorney for Petitioner*
Haynes and Boone, LLP
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Phone: 214-651-5917
Facsimile: 214-200-0812
*patelp@haynesboone.com*

File: 46889.81

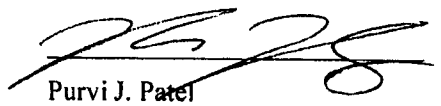
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|---|
| Clockwork IP, LLC | § | Mark: COMFORT CLUB |
| | § | |
| *Petitioner,* | § | |
| | § | |
| v. | § | Cancellation No. 92057941 |
| | § | In re Registration No. 3618331 |
| Barnaby Heating & Air | § | |
| | § | |
| | § | |
| *Respondent.* | § | |

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 4th day of June, 2014, a copy of the foregoing *Petitioner's First Set of Requests for the Production of Documents and Things* was served via first class mail, postage prepaid, on the following:

Julie Celum Garrigue, Esq.
Celum Law Firm, PLLC
11700 Preston Rd.,
Suite 660, PMB 560
Dallas, TX 75230



Purvi J. Patel

# EXHIBIT D

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|---|
| Clockwork IP, LLC | § | Mark: COMFORT CLUB |
| | § | |
| *Petitioner*, | § | |
| | § | |
| v. | § | Cancellation No. 92057941 |
| | § | In re Registration No. 3618331 |
| Barnaby Heating & Air | § | |
| | § | |
| | § | |
| *Respondent.* | § | |

**PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSIONS TO RESPONDENT**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Petitioner Clockwork IP, LLC requests that Respondent Barnaby Heating & Air serve sworn answers to Petitioner's First Set of Requests for Admissions at the offices of Petitioner's counsel, Purvi J. Patel, Haynes and Boone, L.L.P., 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, within thirty-five (35) days after service.

**DEFINITIONS**

The following definitions apply to, and are deemed to be incorporated into, each of the Requests for Admissions herein.

A. "SGI" refers to Success Group International, an entity that was related to Petitioner but was recently sold. SGI includes a family of organizations including AirTime 500, Plumbers' Success International, Electricians' Success International, and Roofers' Success International.

B. "AirTime 500" or "AirTime" refers to an SGI entity that is dedicated to helping independent HVAC contractors succeed by providing a comprehensive set of operational and knowledge tools, including pricing systems, rebates, incentive systems, and training and networking opportunities.

C. "Success Day" and "Success Academy" refers to a periodic events, training seminars, and workshops for AirTime 500 Contractors. CONGRESS franchise events, SGI EXPO events, BRAND

DOMINANCE events, and Senior Tech events refer to periodic events, training seminars, and workshops sponsored and/or held by Petitioner or its affiliates.

D. "Person" is defined as any natural person or any business, legal, or governmental entity or association.

E. "Commerce" signifies commerce that the U.S. Congress may lawfully regulate. The phrase "use in commerce" is defined in Section 45 of the Trademark Act, 15 U.S.C. § 1127, to mean that a mark shall be deemed to be in use in commerce "(1) on goods when – (A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and (B) the goods are sold or transported in commerce, and (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services."

F. "Date of first use" refers to the date of first use in the United States unless otherwise stated.

G. The term "goods" and the term "services," in the singular or plural form, mean both "goods and services."

H. ""Respondent's Mark" means the alleged mark COMFORTCLUB as shown in Respondent's U.S. Registration No. 3,618,331, unless otherwise stated. "Respondent's services" means the services identified in Respondent's U.S. Registration No. 3,618,331, unless otherwise stated.

I. "Petitioner's Mark" means the COMFORTCLUB mark, used by Petitioner at least as early as 2006, in connection with electrical services, plumbing, and heating and air conditioning services, and later covered by U.S. Application Serial No. 85/880,911. Unless otherwise stated. "Petitioner's services" means the services identified in Respondent's U.S. Application Serial No. 85/880,911.

J. The terms "all" and "each" shall be constructed as all and each.

K. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

L. The use of the singular form of any word shall include within its meaning the plural form of the word, and vice versa.

M. The use of the masculine form of a pronoun shall include also within its meaning the feminine form of the pronoun so used, and vice versa.

N. The use of any tense of any verb shall include also within its meaning all other tenses of the verb so used.

## INSTRUCTIONS

Applicant is hereby advised that a failure to specifically deny any request will be taken as an admission of the truth requested.

## REQUESTS FOR ADMISSIONS

**REQUEST FOR ADMISSION NO. 1:**

Respondent has no valid rights in the mark COMFORTCLUB or any variation thereof. At no time was Respondent the owner of COMFORTCLUB.

**REQUEST FOR ADMISSION NO. 2:**

Petitioner is the rightful owner of the COMFORTCLUB Mark as used for Petitioner's services and Respondent's services in the U.S.

**REQUEST FOR ADMISSION NO. 3:**

At no time was Respondent the owner of COMFORTCLUB.

**REQUEST FOR ADMISSION NO. 4:**

Petitioner's Mark has been in use in interstate commerce by Petitioner and/or licensees of Petitioner since at least as early as 2006.

**REQUEST FOR ADMISSION NO. 5:**

Respondent has been an AirTime 500 member and licensee of Petitioner since August 21, 2007. In

signing the AirTime Member Agreement, Respondent agreed that "AirTime wholly owns and/or has protectable legal rights in and to the AirTime Resources whether ...(b) the AirTime Resources are subject to copyright, trademark, tradename, and/or patent rights of AirTime ..." In the Member Agreement, Respondent agreed "[n]ot to use any or all of the AirTime Resources for any purpose other than your valid participation in the AirTime Program...[and N]othing in this Agreement shall be construed as conveying to you ...(ii) any license to use, sell, exploit, copy or further develop any such AirTime Resources." Petitioner's Mark falls under the umbrella of the term "AirTime Resources" as described in said Member Agreement.

**REQUEST FOR ADMISSION NO. 6:**

Respondent attended an SGI "Senior Tech" course in March, 2008. Petitioner's COMFORTCLUB Mark and Petitioner's services were discussed and promoted to Airtime members and licensees at the SGI "Senior Tech" course in March, 2008.

**REQUEST FOR ADMISSION NO. 7:**

Respondent, without the authorization of Petitioner, filed Application No. 77/420,784 for COMFORTCLUB after attending an SGI course covering Petitioner's services rendered under Petitioner's Mark.

**REQUEST FOR ADMISSION NO. 8:**

At all relevant times, Respondent's use of COMFORTCLUB was only as a licensee of Petitioner pursuant to Respondent's AirTime Member Agreement. Respondent was never an owner of the COMFORTCLUB mark.

**REQUEST FOR ADMISSION NO. 9:**

Respondent's Application No. 77/420,784 for Respondent's Mark was filed fraudulently. Respondent's Mark is thus void.

**REQUEST FOR ADMISSION NO. 10:**

Petitioner used the mark COMFORTCLUB in U.S. commerce before any use of the mark COMFORTCLUB in U.S. commerce by Respondent commenced.

**REQUEST FOR ADMISSION NO. 11:**

Prior to March 13, 2008, the filing of Application No. 77/420,784, Respondent was aware of Petitioner's senior and prior right in Petitioner's Mark for both Petitioner's services and Respondent's services.

**REQUEST FOR ADMISSION NO. 12:**

Respondent's Mark is identical to Petitioner's Mark.

**REQUEST FOR ADMISSION NO. 13:**

Respondent's Mark is confusingly similar to Petitioner's Mark.

**REQUEST FOR ADMISSION NO. 14:**

Respondent's services are the same as Petitioner's services.

**REQUEST FOR ADMISSION NO. 15:**

Respondent's services are sold through the same channels of trade as Petitioner's services and directed to the same consumers.

**REQUEST FOR ADMISSION NO. 16:**

Respondent is no longer an AirTime Member and is using the COMFORTCLUB mark without authorization from Petitioner.

**REQUEST FOR ADMISSION NO. 17:**

Respondent's Mark so closely resembles Petitioner's Mark such as to cause confusion, mistake, or deception, and/or to cause the consuming public to believe that Respondent's services marketed or sold in connection with Respondent's Mark originate with or are sponsored, endorsed, licensed, authorized and/or affiliated or connected with Petitioner and/or Petitioner's services in violation of Section 2(d) of the Lanham Act.

**REQUEST FOR ADMISSION NO. 18:**

Petitioner is and will be damaged by registration of Respondent's Mark.

**REQUEST FOR ADMISSION NO. 19:**

Petitioner's rights in Petitioner's Mark predate any use by Respondent of Respondent's Mark in U.S. commerce.

**REQUEST FOR ADMISSION NO. 20:**

All use of the COMFORTCLUB mark by Respondent inured to the benefit of Petitioner, the rightful owner of the COMFORTCLUB mark in the U.S.

**REQUEST FOR ADMISSION NO. 21:**

On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, was aware of Petitioner's senior rights in COMFORTCLUB but signed a fraudulent declaration in support of Respondent's Application No. 77/420,784, with an intent to deceive the U.S. Trademark Office into granting registration of Respondent's Mark.

**REQUEST FOR ADMISSION NO. 22:**

On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, was aware of that it was not the rightful owner of the COMFORTCLUB Mark and Application No. 77/420,784, but signed a fraudulent declaration in support of Respondent's application for registration of Respondent's Mark, with an intent to deceive the U.S. Trademark Office into granting registration of Respondent's Mark.

**REQUEST FOR ADMISSION NO. 23:**

Respondent's Declaration in Application No. 77/420,784 stating that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive...." is false.

**REQUEST FOR ADMISSION NO. 24:**

Petitioner established rights in the United States in its COMFORTCLUB Mark prior to 2008.

**REQUEST FOR ADMISSION No. 25:**

Since as early as 2006, Petitioner has established extensive, common-law rights in COMFORTCLUB Mark.

**REQUEST FOR ADMISSION NO. 26:**

Petitioner's rights in COMFORTCLUB date from prior to the filing date of Respondent's Mark or

Respondent's alleged use in United States commerce of Respondent's Mark.

**REQUEST FOR ADMISSION NO. 27:**

Respondent's Mark is not entitled to continued registration pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1125(d) because it is likely to cause confusion with the Petitioner's Mark.

**REQUEST FOR ADMISSION NO. 28:**

Applicant committed fraud on the U.S. Patent and Trademark Office.

**REQUEST FOR ADMISSION NO. 29:**

Respondent's First Affirmative Defense in paragraph 41 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

**REQUEST FOR ADMISSION NO. 30:**

Respondent's Second Affirmative Defense in paragraph 42 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

**REQUEST FOR ADMISSION NO. 31:**

Respondent's Third Affirmative Defense in paragraph 43 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

**REQUEST FOR ADMISSION NO. 32:**

Respondent's Fourth Affirmative Defense in paragraph 44 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

**REQUEST FOR ADMISSION NO. 33:**

Respondent's Fifth Affirmative Defense in paragraph 45 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

**REQUEST FOR ADMISSION NO. 34:**

Respondent's Sixth Affirmative Defense in paragraph 46 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

**REQUEST FOR ADMISSION NO. 35:**

Respondent's Seventh Affirmative Defense in paragraph 47 of its Answer to Petitioner's Petition to

Cancel is without merit and unsupported by evidence.

**REQUEST FOR ADMISSION NO. 36:**

Respondent's Eighth Affirmative Defense in paragraph 48 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

**REQUEST FOR ADMISSION NO. 37:**

Respondent's Ninth Affirmative Defense in paragraph 49 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

**REQUEST FOR ADMISSION NO. 38:**

Respondent's Tenth Affirmative Defense in paragraph 50 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

**REQUEST FOR ADMISSION NO. 39:**

Respondent's Eleventh Affirmative Defense in paragraph 51 of its Answer to Petitioner's Petition to Cancel is without merit and unsupported by evidence.

**REQUEST FOR ADMISSION NO. 40:**

Petitioner's Mark is distinctive.

**REQUEST FOR ADMISSION NO. 41:**

COMFORTCLUB is distinctive as applied to Respondent's services.

**REQUEST FOR ADMISSION NO. 42:**

The COMFORTCLUB mark is distinctive as applied to Petitioner's services.

**REQUEST FOR ADMISSION NO. 43:**

Respondent adopted Respondent's Mark after learning of Petitioner's use of Petitioner's Mark.

**REQUEST FOR ADMISSION NO. 44:**

Respondent's Mark should be cancelled.

**REQUEST FOR ADMISSION NO. 45:**

This Petition to Cancel should be granted on the basis of a likelihood of confusion and fraud on the Trademark Office.

Respectfully submitted,

CLOCKWORK IP, LLC

Date: June 4, 2014

Purvi J. Patel, *Attorney for Petitioner*
Haynes and Boone, LLP
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Phone: 214-651-5917
Facsimile: 214-200-0812
*patelp@haynesboone.com*

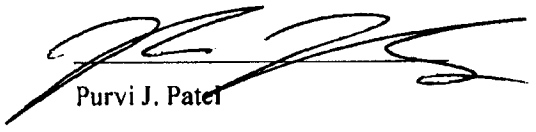
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|---|
| Clockwork IP, LLC | § | Mark: COMFORT CLUB |
| | § | |
| *Petitioner,* | § | |
| | § | |
| v. | § | Cancellation No. 92057941 |
| | § | In re Registration No. 3618331 |
| Barnaby Heating & Air | § | |
| | § | |
| | § | |
| *Respondent.* | § | |

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 4th day of June, 2014, a copy of the foregoing *Petitioner's Requests for Admissions to Respondent* was served via first class mail, postage prepaid, on the following:

Julie Celum Garrigue, Esq.
Celum Law Firm, PLLC
11700 Preston Rd.,
Suite 660, PMB 560
Dallas, TX 75230


Purvi J. Patel

# EXHIBIT E

**Patel, Purvi J.**

**From:** Julie Celum Garrigue <jcelum@celumlaw.com>
**Sent:** Monday, June 30, 2014 9:08 AM
**To:** Patel, Purvi J.
**Cc:** Julie Celum Garrigue
**Subject:** Clockwork IP, LLC v. Barnaby Heating & Air, LLC

Purvi,

This morning I was handed an envelope containing your June 4, 2014 discovery requests. Through no fault of your client's, or mine, the envelope was delivered to another mailbox holder in my suite.

I will work on providing objections and responses as expeditiously as possible, but I am writing to ask for a July 30th deadline to serve responses?

Please let me know whether your client will agree.

Kind regards,

Julie Celum Garrigue

Celum Law Firm, PLLC
11700 Preston Rd.
Suite 660, PMB 560
Dallas, TX 75230

P: 214-334-6065
F: 214-504-2289
E: jcelum@celumlaw.com

**Patel, Purvi J.**

**From:** Julie Celum Garrigue <jcelum@celumlaw.com>
**Sent:** Monday, July 07, 2014 1:19 PM
**To:** Patel, Purvi J.
**Subject:** Re: Clockwork IP, LLC v. Barnaby Heating & Air, LLC

Purvi,

Thank you for your email. I am available for a call on Wednesday, July 9th. Let me know if 10:00 a.m. works for you.

Julie Celum Garrigue
214-334-6065

Sent from my iPhone

On Jul 1, 2014, at 3:29 PM, "Patel, Purvi J." <Purvi.Patel@haynesboone.com> wrote:

> Julie - that is very odd, but we are open to extending the deadline until July 15th.
>
> Also, as I may have indicated, we have evidence clearly showing that our client used the mark first and that your client's claimed first use date was actually around the time he was attending one of the Clockwork seminars - our priority and ownership are clear, so if your client would agree that my client owns the mark, we could resolve this rather quickly. If not, we risk moving towards litigation and my client seeking full damages and attorney's fees. Upon your return (I return from Europe around the same time), it might be helpful to have a call - perhaps on the 9th? Thanks.
>
> Sent from my iPhone
>
> On Jun 30, 2014, at 5:28 PM, "Julie Celum Garrigue" <jcelum@celumlaw.com> wrote:
>
> > Purvi,
> >
> > Also, just to add to that set forth below. I am leaving today for vacation and will be returning, Monday, July 7, 2014. The best way to reach me during this period is via email, as I will traveling out of the country.
> >
> > If you are unwilling or unable to grant the requested continuance, I intend on moving for a continuance by operation of accident or mistake not on the part of my client.
> >
> > Kind regards,

Julie Celum Garrigue

Celum Law Firm, PLLC
11700 Preston Rd.
Suite 660, PMB 560
Dallas, TX 75230

P: 214-334-6065
F: 214-504-2289
E: jcelum@celumlaw.com



On Jun 30, 2014, at 9:07 AM, Julie Celum Garrigue <jcelum@celumlaw.com> wrote:

Purvi,

This morning I was handed an envelope containing your June 4, 2014 discovery requests. Through no fault of your client's, or mine, the envelope was delivered to another mailbox holder in my suite.

I will work on providing objections and responses as expeditiously as possible, but I am writing to ask for a July 30th deadline to serve responses?

Please let me know whether your client will agree.

Kind regards,

Julie Celum Garrigue

Celum Law Firm, PLLC
11700 Preston Rd.
Suite 660, PMB 560
Dallas, TX 75230

P: 214-334-6065
F: 214-504-2289
E: jcelum@celumlaw.com

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# EXHIBIT F

## Patel, Purvi J.

**From:** Patel, Purvi J.
**Sent:** Thursday, July 17, 2014 5:35 PM
**To:** 'jcelum@celumlaw.com'
**Subject:** RE: For our Telephone Call - Comfortclub

We agree to extending future deadlines initially by 60 days and may be open to another 30 if things progress – if you want to file a stipulation to that effect, that is fine, or I can do it – let me know what you would prefer. To be absolutely clear, we served our discovery requests and the supplemental disclosures timely and on the same day – we were certainly within the time frame outlined by the Scheduling Order and since the parties never agreed to email service, you were served via First Class Mail. You have never set forth this false allegation about our service failing to comply with the Scheduling Order – I am very surprised by this approach, frankly, and it unfortunately does not set a good tone for future settlement discussions.

---

**From:** jcelum@celumlaw.com [mailto:jcelum@celumlaw.com]
**Sent:** Thursday, July 17, 2014 4:46 PM
**To:** Patel, Purvi J.
**Subject:** Re: For our Telephone Call - Comfortclub

Purvi,

It's our position that your responses were served outside of the discovery period and that documents may be obtained only upon a reciprocal extension of the discovery deadline.

As I have previously written, I received the requests on Monday, July 2, 2014. What's bizarre too, is that I received Petitioner's Supplemental Disclosures on June 5, 2014, without issue.

If your hands are tied, I understand. So are mine. We can either agree on an extension of all deadlines and settings, or I'll file my motion and have the Board decide.

I will get this letter to you shortly. Let me know when you are available to confer on the above.

Thanks.

Julie Celum Garrigue
214-334-6065

On Jul 17, 2014, at 4:36 PM, "Patel, Purvi J." <Purvi.Patel@haynesboone.com> wrote:

> I don't have authorization for any extension beyond the July 15th deadline for discovery responses ... and since we were providing you guys with an extension of time till that date, we wanted to have additional time to submit our Pretrial Disclosures because we need those responses in order to finalize our filing.
>
> **From:** jcelum@celumlaw.com [mailto:jcelum@celumlaw.com]
> **Sent:** Thursday, July 17, 2014 4:35 PM
> **To:** Patel, Purvi J.
> **Subject:** Re: For our Telephone Call - Comfortclub

Yes, I will email it you and fax it.

My apologies for not sending. Just trying to confirm a few details with Mr. Barnaby.

Do you want me to draft a joint stipulation?

Julie Celum Garrigue
214-334-6065

On Jul 17, 2014, at 4:30 PM, "Patel, Purvi J." <Purvi.Patel@haynesboone.com> wrote:

> Julie – will you send me that letter electronically as well? 90 days may be a bit more than we can agree to ... 45 may be the outer edge. Thanks.
>
> ---
>
> **From:** jcelum@celumlaw.com [mailto:jcelum@celumlaw.com]
> **Sent:** Wednesday, July 16, 2014 2:44 PM
> **To:** Patel, Purvi J.
> **Subject:** Re: For our Telephone Call - Comfortclub
>
> Hi Purvi.
>
> Yes, I was able to discuss the case with my client.
>
> I am actually in the midst of drafting a letter to you on a couple of important issues, one being the continuance of the June 4th discovery deadline, with a resulting continuance of the December setting. We are going to need more than 30 days. I propose a 90 day extension, given the recent sale of AirTime 500, the document you shared with me last week, and the myriad of documents my client has showing his use of the mark prior to the January 19, 2008 date contained in the course materials.
>
> Let me wrap up the letter. I'll send it and then let's talk.
>
> Julie Celum Garrigue
> 214-334-6065
>
> On Jul 16, 2014, at 2:23 PM, "Patel, Purvi J." <Purvi.Patel@haynesboone.com> wrote:
>
> > Julie – Do you have any updates from your client? In light of the extension for discovery responses, do you agree to a 30 day extension of dates in the proceeding? The Pretrial Disclosures are due on Saturday and if we can resolve this, it would seem unnecessary. Thanks.
> >
> > ---
> >
> > **From:** Patel, Purvi J.
> > **Sent:** Wednesday, July 09, 2014 10:01 AM
> > **To:** 'Julie Celum Garrigue'
> > **Subject:** For our Telephone Call - Comfortclub
> >
> > Julie – This is for our discussion.

Attached is a flyer for my client's January 2008 course (discussing the Comfort Club offering) ... the course was also available to SGI- AirTime 500 members and we have documentation that Barnaby attended this seminar. To date Barnaby has still relied on his date of first use as January 22, 2008 -- that so happens to be the date for the course offering (Jan. 21 -23, 2008) in St. Louis. Note that my client has offered this course every year – promoting COMFORTCLUB.

We have strong evidence to support both cancellation and an infringement claim, so I hope we can have fruitful settlement discussions. I will call you in a few minutes.

**Purvi J. Patel**
Partner
purvi.patel@haynesboone.com

**Haynes and Boone, LLP**
2323 Victory Avenue
Suite 700
Dallas, TX 75219-7673

(t) 214.651.5917
(f) 214.200.0812

vCard | Bio | Website



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CONFIDENTIALITY NOTICE: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

# EXHIBIT G

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No. 3,618,331

Registration Date: May 12, 2009

Mark: COMFORTCLUB

| | | |
|---|---|---|
| Clockwork IP, LLC | ) | |
| | ) | |
| Petitioner | ) | |
| | ) | |
| v. | ) | Cancellation No. 92057941 |
| | ) | |
| BARNABY HEATING & AIR, LLC | ) | |
| | ) | |
| Respondent. | ) | |

**RESPONDENT'S OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES, FIRST REQUESTS FOR PRODUCTION, AND FIRST REQUESTS FOR ADMISSION**

**TO: PETITIONER CLOCKWORK IP, LLC AND ITS COUNSEL OF RECORD:**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and TBMP § 403, et seq., Respondent Barnaby Heating & Air, LLC ("Barnaby") serves its Objections and Answers to Petitioner's First Set of Interrogatories, Petitioner's First Requests for Production of Documents and Petitioner's First Requests for Admission.

**GENERAL OBJECTIONS**

Respondent objects to the Petitioner's First Set of Interrogatories, Petitioner's First Request for Production, and First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014.

Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone-Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent also objects to the Petitioner's discovery requests to the extent that Respondent is being forced to respond to Petitioner's discovery requests in violation of TBMP § 403, et seq., and has not been provided sufficient time under the Federal Rules of Civil Procedure and the TBMP to provide responses to Petitioner's discovery requests. Given service on July 2, 2014, Respondent has had less than 14 days to provide responses to Petitioner's discovery. For these reasons, Respondent objects to the foregoing discovery in its entirety.

Respondent objects generally to the definitions and instructions preceding the Petitioner's First Set of Interrogatories, Petitioner's First Requests for Production and Petitioner's First Requests for Admission to the extent they attempt to re-define commonly used words. Respondent, in answering these interrogatories will afford the words contained therein their common, ordinary meaning, except as the Federal Rules of Civil Procedure may specifically define them.

Respondent further objects to the definitions and instructions preceding the Petitioner's First Set of Interrogatories, Petitioner's First Requests for Production and Petitioner's First Requests for Admission to the extent that the requests seek to impose additional or different obligations upon Respondent other than those obligations that are placed on Respondent by the Federal Rules of Civil Procedure, the TBMP and the Trademark Trial and Appeal Board. Respondent will answer these interrogatories in accordance with the applicable rules.

Respondent also objects to the extent these requests are propounded on behalf of entities that are not parties to this litigation, such as "SGI", "AirTime", "AirTime 500", "Success Day", "Success Academy", "CONGRESS", "SGI EXPO", "BRAND DOMINANCE", and "Senior Tech." The pleadings in this matter do not indicate how these entities are related to this litigation and without more Respondent is unable to

adequately respond to Petitioner's discovery requests relating to these various entities. Respondent objects to any requests relating to these various entities because these requests cause Respondent to speculate. Respondent also objects to each of the discovery requests made by, or on behalf of the entities named above, based upon their ambiguity and vagueness, given Respondent unfamiliarity with these entities.

## INTERROGATORIES

**INTERROGATORY NO.1:**

Describe in detail how Respondent's Mark was first conceived of by Respondent.

**ANSWER:**

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to this request to the extent it requires the discovery of confidential commercial information. See FRCP 26(c); *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671 (TTAB 1988). Respondent also objects to the extent this request places an undue burden on Respondent that outweighs its likely benefit. FED. R. CIV. P. 26(b)(2)(C)(iii). Subject to the foregoing objections, and without waiving same, Respondent answers as follows:

Respondent's, Mr. Charlie Barnaby and his nephew, conceived of the mark.

**INTERROGATORY NO. 2:**

State in detail the reasons for Respondent' s selection of COMFORTCLUB and the filing of U.S.

Registration No. 3,618,331 therefor, the date that Respondent's Mark was selected and cleared, and identify all persons involved in the selection and clearance of Respondent's Mark.

**ANSWER:**

Respondent objects to the Petitioner's First Set of Interrogatories in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests include a June 4, 2014 date, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01.

Respondent objects to this request to the extent it requires the discovery of confidential commercial information. See FRCP 26(c); *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671 (TTAB 1988). Respondent also objects to the extent this request places an undue burden on Respondent that outweighs its likely benefit. FED. R. CIV. P. 26(b)(2)(C)(iii).

Respondent objects to the extent this request asks for information that the requesting party has had ample opportunity to discover on its own. FED. R. CIV. P. 26(b)(2)(C)(ii); *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991). Respondent also objects to the extent this request calls for speculation on the part of Respondent with respect to all individuals involved in the "clearance of the [COMFORTCLUB] mark." Respondent has been using the COMFORTCLUB mark continuously since at least as early as January 2008, a full five (5) years prior to the filing of Petitioner's Petition to Cancel. Given the number of years between Respondent's initial trademark application and today, Respondent would be forced to speculate about the identity of "all persons involved in the selection and clearance of Respondent's Mark." Respondent also objects to the extent this request is vague, ambiguous and confusing and Respondent does not fully understand what is being requested when asked to "state in detail the reasons for Respondent's selection of COMFORTCLUB and the filing of U.S. Registration No. 3,618,331 therefor." Subject to the foregoing

Interrogatories to Respondent which nonetheless were reviewed or relied upon by Respondent in preparing answers to said Interrogatories, or which support Respondent's responses thereto.

**ANSWER:**

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Had Petitioner served a timely request to obtain copies of these documents, Respondent may have been able to provide this material to Petitioner. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for these documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* If the parties can agree to a reciprocal extension of the discovery deadlines in this case, Respondent will provide assistance to Petitioner in retrieving electronically stored records.

Subject to the foregoing objections, and without waiving same, Respondent will rely on any and all

documents that tend to support its defenses in this case, including, but not limited to, its business records, those documents that Petitioner and Respondent will include on their exhibit lists, any and all documents identified by Petitioner and Respondent in their Rule 26(A)(1) Disclosures and in Petitioner's most recent June 4, 2014 Supplemental Disclosures, any and all documents on file with the U.S. Patent & Trademark Office, and the Trademark Trial and Appeal Board.

**REQUEST FOR PRODUCTION NO. 3:**

All documents and things relating to the following:

(a) Respondent's creation, selection, development, clearance, approval, and adoption of Respondent's Mark, including all documents relating to any trademark searches which were conducted by or for Respondent in connection with Respondent's Mark, the results thereof, and samples of any marks or names considered and rejected.

(b) The content or result of any meeting or discussion at which Respondent's consideration, acquisition, selection, approval, or adoption of Respondent's Mark were discussed;

(c) Further investigations conducted by or on behalf of Respondent into the current status of any marks uncovered by trademark searches which were conducted by or for Respondent in connection with Respondent' s Mark;

(d) Information, notice, or opinion(s) concerning conflict or potential conflict associated with your adoption, use, or registration of Respondent's Mark;

(e) All communications in which a person has recommended or cautioned against Respondent's acquisition, selection, development, adoption , or use of Respondent' s Mark; and

(f) All information, notices, or opinions concerning the availability of Respondent' s Mark for use or registration.

**ANSWER:**

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the

date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Had Petitioner served a timely request to obtain copies of these documents, Respondent may have been able to provide this material to Petitioner. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for these documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* If the parties can agree to a reciprocal extension of the discovery deadlines in this case, Respondent will provide assistance to Petitioner in retrieving electronically stored records.

Subject to the foregoing objections, and without waiving same, Respondent will rely on any and all documents that tend to support its defenses in this case, including, but not limited to, its business records,

those documents that Petitioner and Respondent will include on their exhibit lists, any and all documents identified by Petitioner and Respondent in their Rule 26(A)(1) Disclosures and in Petitioner's most recent June 4, 2014 Supplemental Disclosures, any and all documents on file with the U.S. Patent & Trademark Office, and the Trademark Trial and Appeal Board.

**REQUEST FOR PRODUCTION NO. 4:**

All documents and things relating to communications issued or received by Respondent relating to Respondent's Mark.

**ANSWER:**

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Had Petitioner served a timely request to obtain copies of these documents, Respondent may have been able to provide this material to Petitioner. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient

notice of Petitioner's request for these documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* If the parties can agree to a reciprocal extension of the discovery deadlines in this case, Respondent will provide assistance to Petitioner in retrieving electronically stored records.

Subject to the foregoing objections, and without waiving same, Respondent will rely on any and all documents that tend to support its defenses in this case, including, but not limited to, its business records, those documents that Petitioner and Respondent will include on their exhibit lists, any and all documents identified by Petitioner and Respondent in their Rule 26(A)(1) Disclosures and in Petitioner's most recent June 4, 2014 Supplemental Disclosures, any and all documents on file with the U.S. Patent & Trademark Office, and the Trademark Trial and Appeal Board.

**REQUEST FOR PRODUCTION NO. 5:**

All documents and things relating to communications issued or received by Respondent relating to Petitioner's Marks.

**ANSWER:**

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this

case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Had Petitioner served a timely request to obtain copies of these documents, Respondent may have been able to provide this material to Petitioner. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for these documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* If the parties can agree to a reciprocal extension of the discovery deadlines in this case, Respondent will provide assistance to Petitioner in retrieving electronically stored records.

Subject to the foregoing objections, and without waiving same, Respondent will rely on any and all documents that tend to support its defenses in this case, including, but not limited to, its business records, those documents that Petitioner and Respondent will include on their exhibit lists, any and all documents identified by Petitioner and Respondent in their Rule 26(A)(1) Disclosures and in Petitioner's most recent June 4, 2014 Supplemental Disclosures, any and all documents on file with the U.S. Patent & Trademark Office, and the Trademark Trial and Appeal Board.

**REQUEST FOR PRODUCTION NO. 6:**

All documents and things relating to the first use anywhere and the first use in commerce of Respondent's Mark by or on behalf of Respondent.

**ANSWER:**

Respondent objects to the Petitioner's First Request for Production of Documents in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2,

Subject to the foregoing objection(s), denied.

**REQUEST FOR ADMISSION NO. 2:**

Petitioner is the rightful owner of the COMFORTCLUB Mark as used for Petitioner's services and Respondent's services in the U.S.

**Answer:** Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* Subject to the foregoing objection(s), denied.

**REQUEST FOR ADMISSION NO. 3:**

At no time was Respondent the owner of COMFORTCLUB.

**Answer:** Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

Subject to the foregoing objection(s), denied.

**REQUEST FOR ADMISSION NO. 4:**

Petitioner's Mark has been in use in interstate commerce by Petitioner and/or licensees of Petitioner since

**RESPONDENT'S OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO.1:**

Respondent has no valid rights in the mark COMFORTCLUB or any variation thereof. At no time was Respondent the owner of COMFORTCLUB.

**Answer:**

Respondent objects to the Petitioner's First Requests for Admission in their entirety given the date of actual delivery and service of the Petitioner's discovery requests, which was July 2, 2014. Discovery in this case closed on June 4, 2014. Petitioner's discovery requests are dated June 4, 2014, but Respondent did not receive Petitioner's discovery requests until July 2, 2014. Through no fault of Respondent's, Respondent received Petitioner's discovery requests nearly 30 days following the close of discovery in this case. Respondent did receive Petitioner's Supplemental Rule 26(A)(1) Disclosures, also dated June 4, 2014, on June 5, 2014, but Respondent did not receive Petitioner's discovery requests until the morning of July 2, 2014. Given the delay in service, and the lack of a stipulation between the parties to extend the discovery period in this case, Respondent objects to Petitioner's discovery requests in their entirety. The discovery devices, namely, discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Respondent also objects to the extent the request, as written, calls for speculation and is vague, ambiguous and confusing. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for this information, and supporting documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.*

documents and things, and requests for admission, are available for use only during the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978), and *Rhone- Poulenc Industries v. Gulf Oil Corp.*, 198 UPSQ 372 (TTAB 1978). Respondent has no obligation to respond to an untimely request for discovery. TBMP § 403.01. Respondent is willing to enter into a reciprocal extension of the discovery deadline in this case, following a conference between the parties, or a hearing on this matter.

Respondent objects to this request to the extent it is over broad and unduly burdensome. Respondent also objects to the extent this request is not narrowly tailored to a specific fact, or issue in this matter, and as such would require Respondent to speculate about what information Petitioner is seeking from Respondent via this particular request. Had Petitioner served a timely request to obtain copies of these documents, Respondent may have been able to provide this material to Petitioner. Because the burden of deriving the answer is substantially the same for both parties, and because Respondent has not been provided sufficient notice of Petitioner's request for these documents, and because the discovery period is over, Respondent is under no obligation under the Federal Rules of Civil Procedure, or under TBMP § 403.01 to provide a response to Petitioner's request. *Id.* If the parties can agree to a reciprocal extension of the discovery deadlines in this case, Respondent will provide assistance to Petitioner in retrieving electronically stored records.

Subject to the foregoing objections, and without waiving same, Respondent will rely on any and all documents that tend to support its defenses in this case, including, but not limited to, its business records, those documents that Petitioner and Respondent will include on their exhibit lists, any and all documents identified by Petitioner and Respondent in their Rule 26(A)(1) Disclosures and in Petitioner's most recent June 4, 2014 Supplemental Disclosures, any and all documents on file with the U.S. Patent & Trademark Office, and the Trademark Trial and Appeal Board.

# EXHIBIT H

## Patel, Purvi J.

**From:** Patel, Purvi J.
**Sent:** Tuesday, September 09, 2014 11:11 AM
**To:** 'Julie Celum Garrigue'
**Subject:** Conference to discuss discovery deficiencies/30 day extension - Comfortclub

**Importance:** High

Julie – Following up on our previous communications, we have yet to receive any supplemental discovery responses from Barnaby. In a good faith effort to move things forward, I propose a telephone conference on Friday. I am pretty open the entire day. I am finalizing correspondence that outlines the key deficiencies and we can discuss them during our call. I understand that you were going to speak with Mr. Barnaby regarding additional evidence and possible settlement options, and that would be a fruitful topic as well.

Also, further to the below discussions, we would be open to an additional 30 day extension, in a final attempt to resolve this once and for all. If we cannot confer this week or work through an additional 30 day extension, we will have no choice but to move forward and request TTAB intervention in the form of a Motion to Compel/for Sanctions and consider escalation to a federal lawsuit. Based on our last conversation, I don't think either party wants to move forward in that direction.

If your schedule does not permit for a call this week and you want to move forward with the 30 day extension, I can file the extension (with email service as previously discussed) and am also relatively open next Thursday or Friday. Please let me know at your earliest convenience. Thanks.

haynes*boone*
**Purvi Patel Albers**
Partner
purvi.patel@haynesboone.com

**Haynes and Boone, LLP**
2323 Victory Avenue
Suite 700
Dallas, TX 75219-7673

(t) 214.651.5917
(f) 214.200.0812

vCard | Bio | Website

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**From:** Julie Celum Garrigue [mailto:jcelum@celumlaw.com]
**Sent:** Friday, July 18, 2014 11:07 AM
**To:** Patel, Purvi J.
**Subject:** Re: For our Telephone Call - Comfortclub

Ok. We prefer a 60 day extension from now.

Julie Celum Garrigue

Celum Law Firm, PLLC
11700 Preston Rd.

# EXHIBIT I

haynesboone

September 10, 2014

***Via Email to jcelum@celumlaw.com***

Julie Celum Garrigue, Esq.
Celum Law Firm, PLLC
11700 Preston Road
Suite 660, PBM 560
Dallas, Texas 75230

Re: *Clockwork IP, LLC v. Barnaby Heating & Air, LLC*
Cancellation No. 92057941 (Our Ref.: 46889.81)

Dear Julie:

Further to my email earlier this week requesting a telephone conference, this represents our good faith effort to resolve Respondent Barnaby Heating & Air, LLC's deficient responses provided to Petitioner's First Set of Interrogatories, Petitioner's First Set of Requests for Production of Documents, and Petitioner's First Requests for Admission. Please provide times for a telephone conference on **Friday, September 12, 2014**, to discuss how we can resolve these deficiencies. Moreover, in a further showing of good faith, and since we have yet to receive any responsive documents, we suggest an additional 30 day extension of deadlines in the above referenced cancellation proceeding. Absent further discussions and the extension of deadlines, we will have no choice but to consider a Motion to Compel and/or Sanctions – or escalation to federal litigation.

As set forth below, the responses suffer from numerous deficiencies and, in almost all instances, fail to set forth basic information called for by Clockwork IP, LLC and required by the Federal Rules of Civil Procedure, the Code of Federal Regulations, and the Trademark Trial and Appeal Board Manual of Procedure. Clockwork submitted 27 Interrogatory Requests to Barnaby, and in response, we received over 110 objections from you with very few substantive responses. For the 90 Requests for Production Clockwork submitted to Barnaby, we received 270 objections and not a single responsive document. Barnaby cannot wholesale ignore its discovery obligations.

Respondent has asserted several improper and meritless objections to the requests for discovery. One of the most inappropriate objections that you lodged for each and every one of Petitioner's requests was that Respondent allegedly has no obligation to respond to Petitioner's requests for discovery because they were served outside of the discovery period. While this objection

**Haynes and Boone, LLP**
**Attorneys and Counselors**
2323 Victory Avenue, Suite 700
Dallas, Texas 75219-7672
Phone: 214.651.5000
Fax: 214.651.5940

occasionally takes a slightly different form in wording, the substance remains the same – in any form, it is completely without merit. Petitioner mailed its requests for discovery to Respondent on June 4, 2014, via First-Class Mail. When service is made via First-Class Mail, the date of mailing is considered the date of service. 37 C.F.R. § 2.119(c). Petitioner's requests were therefore timely served on Respondent during the discovery period, namely on June 4, 2014. Interrogatories, Requests for Production, and Requests for Admission may be served on an opposing party up through the closing date of discovery, and a responding party may not object to such requests on the basis that responses would be due after the close of the discovery period. TBMP § 403.03; *see also* 37 C.F.R. § 2.120(a)(3).

Respondent contends that it did not receive Petitioner's discovery requests until July 2, 2014. In a show of good faith and in an effort to obtain evidence so that the Board may decide this proceeding on its merits, Petitioner agreed to allow Respondent an extension of time until July 15, 2014, respond to Petitioner's discovery requests. Respondent accepted Petitioner's offer of extension, only to reply with the above-described objection applied to each and every one of Petitioner's discovery requests. Such action conveys a lack of intention to cooperate and conduct discovery in good faith.

In addition to its untenable objection regarding timeliness, Respondent's answers to Petitioner's discovery requests are inadequate for a host of additional reasons. To be clear, Respondent failed to produce (or make available) a single document or thing to Clockwork. Respondent has raised other meritless objections and has failed to answer any request for discovery in a way that indicates a good faith attempt to comply with the rules governing this proceeding.

As you are well aware, the grounds for cancellation concern ownership of the COMFORTCLUB mark, likelihood of confusion, the seniority/priority of Clockwork's rights in the COMFORTCLUB, and relatedly, Barnaby's procurement of Registration No. 3,618,331 based on fraudulent statements made to the U.S. Trademark Office. In the interest of efficiency for both parties, Clockwork submitted very targeted discovery requests seeking specific information related to these particular issues raised in the cancellation – and yet, we received inapplicable objections from Barnaby claiming "undue burden," "irrelevant," speculative, and for information only Barnaby would know, "opportunity to discovery on your own." The strangest of them all was your objection that numerous Interrogatories were "premature until additional discovery is conducted," – to be clear, the discovery period was already closed when you submitted your objections, so this position was and is nonsensical.

Having said all this, in an effort to resolve this issue, we have illustrated some of the deficient answers below. Also, for talking points, we have also enclosed a chart that outlines our

discovery request as well as your main meritless objections thereto. We are hopeful that by bringing these issues to light and allowing Registrant an opportunity to respond properly, we can conduct discovery appropriately with respect to Petitioner's request as a whole.

**Interrogatories**

Respondent's Answers and Objections to Petitioner's First Set of Interrogatories suffer from a myriad of deficiencies. Interrogatories must be answered by the party to whom they are directed. Fed. R. Civ. P. 33(b)(1); TBMP § 405.04(c). To the extent that it is not objected to, each interrogatory must be answered "separately and fully in writing under oath." Fed. R. Civ. P. 33(b)(3). Where Respondent has in fact provided an answer, it has not endeavored to answer in a manner that is responsive to the question asked – rather, it seems to be a boilerplate and generally irrelevant statement regarding Respondent's stated date of first use. Respondent appears to have provided such an unresponsive answer just so it can allege that it "responded" to at least a small percentage of the discovery requests submitted by Clockwork.

Beyond these general insufficiencies, each response provided is inadequate for other reasons, including the assertion of meritless objections. In an effort to resolve this inadequacy, we have detailed some of the issues below and can discuss all of the concerns based on the enclosed grid during our conference. To be clear, the following examples are illustrative in nature and are not meant to be considered a comprehensive explanation of the deficiencies of Respondent's discovery responses.

*Response to Interrogatory No. 9:*

This interrogatory asked the Respondent to "[d]escribe and identify all documents and things relating to and showing Respondent's use of Respondent's Mark in commerce before and after Mr. Charles Barnaby's execution of the Success Academy 'Acknowledgement of Non-Solicitation Policy' dated March 17, 2008." Respondent provided, subject to its objections, the following non-responsive answer: "Respondent has used the COMFORTCLUB mark continuously and consistently since, at least as early as January 22, 2008."

Respondent's answer is not only inadequate; it fails to relate to the question asked. Petitioner requested that Respondent *describe* and *identify* all *documents and things* relating to and showing Respondent's use of its mark in commerce at specified points in time. Respondent's answer is merely an assertion that Respondent has used its mark, something that is not in dispute and about which Petitioner has not inquired in this interrogatory. Since this request is specifically directed to the issues of priority, first use, ownership, and fraud on the Trademark Office, it is quite relevant and we would expect Respondent to provide an answer to this interrogatory that is responsive to the question asked.

Respondent has also raised several objections to this Interrogatory, none of which has merit. As explained above, the objection as to the timeliness of the Interrogatories and Respondent's duty to answer them is baseless.

The objection on the ground that "this request asks for information that the requesting party has had ample opportunity to discover on its own" is also flawed and seemingly stems from a misunderstanding of the Fed. R. Civ. P. 26(b)(2)(C)(ii), which Respondent cites in support of its objection. The actual text of that rule instructs a court to limit the frequency or extent of discovery where "the party seeking discovery has had ample opportunity to obtain the information *by discovery in the action.*" Clockwork's request for this information was via its first and only discovery requests in the action. As explained previously, the applicable rules provide that discovery requests may be served through the end of the discovery period. Petitioner's request was therefore within its "opportunity for discovery" period, and Respondent's objection is moot.

Respondent further objected on the ground that the interrogatory calls for speculation with respect to the document described in the interrogatory. This document, however, was described with detail and specificity, eliminating any possibility that Respondent would need to speculate as to the nature or identity of the document. Petitioner requests that Respondent provide a response to this and all other interrogatories that is complete and responsive.

*Response to Interrogatory No. 25:*
This interrogatory sought an identification of the persons having knowledge of allegations and facts asserted in Respondent's interrogatory responses, as well as the substance of those persons' knowledge. In answer, Respondent raised several objections and then "refer[red] Petitioner to Respondent's Rule 26(a)(1) disclosures for a list of those individuals Respondent believes have the most knowledge about the facts of this case." This improper answer is not responsive to the question asked. Petitioner did not inquire as to the persons who have knowledge about the case, but rather into those persons who provided the information contained in Respondent's interrogatory responses. This is especially relevant to Petitioner as there is no indication in Respondent's responses that anyone besides Respondent's counsel even saw the discovery requests.

As to the objections raised by Respondent, none is well-taken as all are without merit. As explained above, the objection as to the timeliness of the interrogatories and Respondent's duty to answer them is baseless. Respondent further objected on the ground that this interrogatory asks for opinions and contentions, but an interrogatory is not objectionable merely because it

calls for an opinion. Fed. R. Civ. P. 33(a)(2); TBMP § 405.02. Respondent's additional objection that the interrogatory is premature until additional discovery is conducted is completely baseless, as the discovery period is now closed.

Respondent's decision to "decline[ ] to provide a narrative answer . . . because the interrogatory asks for information that is available from its business and electronically stored records" is improper in the context of a proceeding before the Trademark Trial and Appeal Board. We would remind you that, while the Federal Rules of Civil Procedure do apply to these proceedings, they are also modified by the Trademark Trial and Appeal Board Manual of Procedure. Where the answer to an interrogatory may be derived from the business records of the responding party, and the burden of deriving such information is substantially the same for either party, the responding party may answer "by specifying the records from which the information may be derived or ascertained, and affording the propounding party reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts or summaries." TBMP § 405.04(b). In this case, the burden to Respondent of identifying the persons who have knowledge of the facts alleged in its interrogatory responses is far less than the burden to Petitioner of deriving this information from Respondent's business records, so the objection is not proper. Even assuming otherwise, however, Respondent still has not sufficiently complied with the rule as Respondent has failed to specify the records in sufficient detail to "permit the propounding party to locate and identify, as readily as can the responding party, the records from which the answer may be ascertained." TBMP § 405.04(b). In fact, Respondent has made no relevant records available to Petitioner at this time.

Respondent's objection that this request is "over broad and unduly burdensome" is absurd on its face. Petitioner has asked for a list of the persons having knowledge of the facts alleged in its interrogatory responses, and the substance of those persons' knowledge. It is beyond the bounds of reason to assert that making such a list and providing such information is "over broad" or "unduly burdensome," as it simply requires a clerical action be performed alongside the information gathering that is a necessary prerequisite to providing responses to discovery requests.

Similarly, the objection that such a request "calls for speculation by Respondent as to each and every individual who may have knowledge about Respondent's prior use of the COMFORTCLUB mark" is without merit. First, such an objection is not relevant to the question as Petitioner has not asked for persons with knowledge about use, but persons with knowledge of facts alleged in interrogatory responses. Second, it requires no speculation to provide the name and information regarding the knowledge of a person who provided information contained in a

discovery request. Petitioner requests that Respondent provide a response to this and all other interrogatories that is complete and responsive.

**Requests for Production**

Respondent's Answers and Objections to Petitioner's First Set of Requests for Production of Documents are likewise deficient. An answer must be provided for each item, stating that inspection and related activities will be permitted as requested or stating an objection. Fed. R. Civ. P. 34(b)(2)(A); TBMP § 406.04. Alternatively, a responding party may simply produce the documents.

All 90 of Petitioner's Requests for Production have been objected to and "answered" in exactly the same way, all of which are inadequate. The most outrageous objection set forth by Respondent is as follows: "If the parties can agree to a reciprocal extension of the discovery deadlines in this case, Respondent will provide assistance to Petitioner in retrieving electronically stored records." This clearly demonstrates Respondent's lack of intention to make a good faith effort to respond to Petitioner's discovery requests – despite being obligated to do so. Barnaby failed to serve discovery requests on Clockwork during the discovery period and its misstep has no bearing on Barnaby's obligation to timely and comprehensively responds to discovery requests timely served upon Respondent.

*Response to Request for Production No. 6*

This was a request for documents concerning the first use and use in commerce of Respondent's mark by or on behalf of Respondent. In answer, Respondent raised several objections and then, subject to those objections, stated that "Respondent will rely on any and all documents that tend to support its defenses in this case, including, but not limited to, its business records, those documents that Petitioner and Respondent will include on their exhibit lists, any and all documents identified by Petitioner and Respondent in their Rule 26(A)(1) Disclosures and in Petitioner's most recent June 4, 2014 Supplemental Disclosures, any and all documents on file with the U.S. Patent & Trademark Office, and the Trademark Trial and Appeal Board."

This answer is inadequate. Respondent may not make a blanket statement as to the documents on which it intends to rely, some of which—like "exhibit lists"—may not exist in a proceeding before the Trademark Trial and Appeal Board. Moreover, Respondent has not even indicated that it will make these insufficiently described documents available to Petitioner, let alone that it will produce the documents by copying and forwarding them to us, which is the Board's preferred method of production. TBMP § 406.04(b); Fed. R. Civ. P. 34(b)(2)(E).

As to the objections raised by Respondent, none is well-taken as all are without merit. As explained above, the objection as to the timeliness of the requests and Respondent's duty to answer them is baseless.

Respondent's objection that this request is "over broad and unduly burdensome" is absurd on its face. Petitioner has asked for documents that relate to Respondent's first use of its mark. These are documents which Respondent itself will require in order submit evidence relating to priority, one of the issues in dispute in this action.

Respondent's objection that this request is "not narrowly tailored to a specific fact or issue in this matter" is likewise beyond the bounds of a reasonable objection. This request is narrowly tailored to the specific issue of priority. Petitioner requests that Respondent provide a response to this and all other requests that is complete and responsive.

**Requests for Admission**

In responding to a Request for Admission, a party must specifically deny the request or state in detail why he cannot truthfully admit or deny it. Fed. R. Civ. P. 36(a)(4). A denial must fairly respond to the substance of the matter. Fed. R. Civ. P. 36(a)(4); TBMP § 407.03(b). We note that all 35 of Petitioner's Requests for Admission have been objected to in the same manner and have all been denied, with the exception of Request for Admission No. 16, which Respondent was "unable to admit or deny." Such boilerplate objections and denials, some of which suggest that objections and answers were lodged without even reading the request, undermine the "fair response" and "good faith" contemplated by the applicable rules. In light of this, the accuracy and veracity certain denials are certainly in question – making Respondent's responses to the other discovery requests even more important.

As indicated, Petitioner wishes to resolve these outstanding discovery issues quickly and without further Board intervention. "The Board expects parties (and their attorneys or other authorized representatives) to cooperate with one another in the discovery process, and looks with extreme disfavor on those who do not." TBMP § 408.01. It is our hope that, by explaining the deficiencies of Respondent's discovery answers, Respondent will now provide answers that are complete, responsive, and made in good faith. However, if Respondent does not respond to our request for conference this week, Petitioner will seek TTAB intervention and/or escalation to federal litigation.

I look forward to hearing from you at your earliest convenience.

Sincerely,

*/Purvi Patel Albers/*

Purvi Patel Albers
Telephone: 214-651-5917
Facsimile: 214-200-0853
*purvi.patel@haynesboone.com*

Enclosures

D-2303047_1

## Patel, Purvi J.

**From:** Patel, Purvi J.
**Sent:** Friday, September 12, 2014 11:45 AM
**To:** 'jcelum@celumlaw.com'
**Subject:** RE: ESTTA. Stipulated/Consent Motion. confirmation receipt ID: ESTTA616417
**Attachments:** 2303040_1.pdf

Julie - I have not received a response to my below correspondence, so please advise whether you are available for our discovery conference today. Attached is the grid of the key objections for discussion during our call. In light of all of the issues at hand, the call will probably take at least 1.5 hours.

-----Original Message-----
From: Patel, Purvi J.
Sent: Thursday, September 11, 2014 12:27 PM
To: 'jcelum@celumlaw.com'
Subject: RE: ESTTA. Stipulated/Consent Motion. confirmation receipt ID: ESTTA616417

Julie - Following up, I located the attached email you sent on August 13, 2014 -- I was out of the office for my wedding that week. Upon my return, I reviewed the attachment whereby you wanted to confirm email service, but since we had already agreed to email service, I viewed it as redundant. Since that time, we have only corresponded via email, so I am not sure what your concern is on that point. On the remainder, as I've stated numerous times, your discovery deadline was July 15th and your obligation was continuing to respond appropriately - and we were not amenable to yet another extension, mainly because your original responses were so egregiously deficient in the first place and suggested no intention to comply. If we can get your clarification on our inquiries below at your earliest convenience, that would be helpful. Note that I will be out of the office next Monday and Tuesday for the INTA (International Trademark Association) Board Meeting in DC.

-----Original Message-----
From: Patel, Purvi J.
Sent: Thursday, September 11, 2014 8:54 AM
To: 'jcelum@celumlaw.com'
Subject: RE: ESTTA. Stipulated/Consent Motion. confirmation receipt ID: ESTTA616417

Julie -

1. I need to look into what August 13, 2014 correspondence you are referring to, but during our call in July, it was my understanding that we agreed to provide all correspondence as a courtesy via email and we could decide if we wanted to continue to also provide a first class mail copy. I am not aware of a request on your part regarding an extension of discovery deadlines and will look for that correspondence and be in touch. Did you send that via email as well? If so, if you could resend it to make sure we are looking at the same document, that would be appreciated.

2. My client is unclear about the August 8, 2014 letter you are referring to. Note that even if we did know what you were talking about, Barnaby served no discovery and we had no obligation to voluntarily supply any information - especially since Barnaby had yet to respond to any of Clockwork's properly served discovery requests. My client has concealed nothing from you, and its dates of first use are accurate and true. The fact that your client's stated date of first use of COMFORTCLUB is the day he attended a seminar held by my client where Clockwork promoted COMFORTCLUB is the problematic fact here and truly supports fraud on the Trademark Office - so if anyone is misleading here, it is Barnaby. If you have some sort of evidence that any documents that Clockwork voluntarily provided to you are not authentic (which I doubt you do), that is something that you would have had to disclose in your

discovery responses - so this is all news to us, so we ask that you comprehensively respond to our discovery requests so we don't receive any more surprises regarding your client's false allegations.

3. Everything we have served or communicated on behalf of Clockwork has been timely, and you know this as fact. Our client properly served its discovery requests during the discovery period (on the last day) and served it upon you via certified mail. You admitted that there the mail was misrouted in your office building, and since you allegedly did not receive it for 2 weeks, we graciously provided you with a 15 day extension to respond. Your latest round of contentions questioning my integrity in signing the Certificate of Service is truly unprofessional ... and frankly a misrepresentation of fact. I have correspondence from you with both versions of your story on the discovery. I am so confounded by this line of discussions because as I indicated, we graciously granted you a 15 day extension to respond, and yet, when you did respond, all of your discovery responses were deficient. Our extension was indeed reciprocal to the delay you allege - and at this point, based on the baseless accusations you are currently making, I truly wonder whether you timely received the requests and just used the "wrong office error" to stall.

4. I am also confused about your issue with the extension of deadlines. We agreed to a 60 day extension of TTAB deadlines, and that is what we did -- we discussed this, we have correspondence between us confirming this, and I served the 60 day extension upon you immediately upon filing -- so you are well aware of where we stood, and now, again, you are misrepresenting facts about what we agreed to do. I am not really clear on what you are upset about on this front, so I need for you to elaborate here - what did you understand the extension of deadlines to mean? We never talked about going back in time to reopen dates ... and your discovery response deadline certainly never tracked anything in the Scheduling Order. After we spoke about your insufficient responses to Clockwork's discovery, you provided confirmation that you would be working with your client to provide more responsive information -- we did not provide a set deadline, and it was somewhat fluid, but we did not grant 60 days. Having said this, if you are asking for additional time to respond to discovery, we will provide a 15 day extension if we all agree to a 45 day extension of TTAB deadlines. That way, we can review your discovery responses and prepare our Pretrial Disclosures.

5. I don't know how you can extend deadlines without our consent, but we had agreed to a 30 day extension and were asking for your agreement of the same thing -- so, again, I am confused about what you are seeking. There is no "continuance" option in the TTAB world, so if you could clarify what you are seeking to do with the TTAB, that would be helpful. Your motion is a waste of money and will be denied because the facts clearly favor our timely service of discovery, our attempts to amicably resolve this matter, our good faith efforts to seek useful discovery responses by providing extensions of time, etc. It is Barnaby that has failed to be responsive or amenable to meaningful settlement discussions, and any filing you make with the Board will make this crystal clear -- unless you decide to misrepresent additional facts in your Motion, of course.

6. Am I to take all this to mean that you are not willing to have a conference on Friday to discuss deficient responses and that you are not willing to grant a 30 day extension of deadlines, but instead want to move, without our consent, for a continuance? Please clarify where you stand, and we will proceed accordingly.

Purvi Patel Albers
Partner
purvi.patel@haynesboone.com

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2323 Victory Avenue
Suite 700
Dallas, TX 75219-7673

(t) 214.651.5917
(f) 214.200.0812

vCard | Bio | Website

-----Original Message-----
From: jcelum@celumlaw.com [mailto:jcelum@celumlaw.com]
Sent: Wednesday, September 10, 2014 11:42 PM
To: Patel, Purvi J.
Subject: Re: ESTTA. Stipulated/Consent Motion. confirmation receipt ID: ESTTA616417

Purvi,

And with all of this, do you pretend not to have received my correspondence relating to our discussions regarding service via email and an extension of the discovery deadline in this case? I have not received a response from you, or your office, regarding my written request, dated August 13, 2014.

Also, your client sent a cease & desist to a third-party on August 8, 2014, requesting they cease use of the COMFORTCLUB mark. Thus, you have kept this information secret for over 1 month, and failed to disclose your client's knowledge about this concurrent use to either my firm, or the Board.

Our position has not changed since you served discovery requests - !!14+ days outside the discovery period!! - and you have not agreed to a reciprocal extension of the discovery deadline.

Do not threaten my client with sanctions, when your client conceals relevant facts and necessary a parties, and my written communications to you and your firm go unanswered. It is you who has procrastinated, failed to disclose relevant evidence and information, and caused further delay.

Your client has misrepresented its date of first use in its initial trademark application and its petition for cancellation. We also have evidence that suggests that the documents you produced to my office last month indicating a date of first use are not authentic.

Furthermore, there is very newly discovered evidence that your client has sent a written communication to a third-party licensee of the COMFORTCLUB mark. Given these new developments and your lack of communication to my written correspondence, we are moving for a continuance of all of the deadlines, and will be filing a motion to join a necessary third-party immediately upon the recording of the assignment.

Julie Celum Garrigue
214-334-6065

> On Sep 10, 2014, at 6:38 PM, "Patel, Purvi J." <Purvi.Patel@haynesboone.com> wrote:
>
> Correct - the extension I filed and that we agreed to was an extension of all deadlines with the TTAB (chain attached). Discovery had already closed when we had our discussion, but Clockwork's discovery requests were served within the period (as explained previously in our various communications, as well as in detail in my formal correspondence to you earlier today). Your client's obligation to respond to discovery served within the discovery period continued (the close of the discovery period does not obviate that requirement. Moreover, Clockwork consented to a July 15, 2014 extension to Barnaby for purposes of submitting responses and responsive documents. Your July 15th communication/objections were not responsive -- and rather, Barnaby's discovery responses were woefully deficient

and your objections were without merit. In your July 18, 2014 email (attached), you indicated that you would move forward with providing more substantive discovery responses, but we have not received any additional information to date. Now, once again, we are coming upon the pretrial disclosure deadline and we still do not have a single responsive document or response from you. In light of this, absent an additional 30 day extension during which you properly reply to our discovery requests/make documents and things available for our review, Clockwork is left with no choice but to proceed with a Motion to Compel and for Sanctions. As you well know, the TTAB does not view a failure to respond to discovery kindly, and would likely grant sanctions in this case. Since this proceeding does not seem to be moving forward, and Clockwork has tried to amicably resolve this dispute while receiving wholesale refusals from Barnaby, my client is seriously considering whether TTAB intervention or federal court involvement makes more sense at this point.
>
> We will expect to hear from you regarding the extension of deadlines by early Friday AM. We will get started on our Motion in the meantime. I look forward to our Friday afternoon call at 4:30 -- I will call you.
>
> -----Original Message-----
> From: jcelum@celumlaw.com [mailto:jcelum@celumlaw.com]
> Sent: Wednesday, September 10, 2014 6:07 PM
> To: Patel, Purvi J.
> Subject: Re: ESTTA. Stipulated/Consent Motion. confirmation receipt
> ID: ESTTA616417
>
> Purvi,
>
> The stipulation you filed only extended pretrial disclosures. It did not extend discovery.
>
> Also, the letter your client sent was dated August 8th. I want to be clear that I did not receive the letter until some time after. Wasn't sure if I made that clear when we spoke moments ago.
>
> Julie Celum Garrigue
> 214-334-6065
>
>
>
>> On Jul 18, 2014, at 11:17 AM, "Patel, Purvi J." <Purvi.Patel@haynesboone.com> wrote:
>>
>> Julie - Here is the 60 Day Stipulated Extension Request as filed with the PTO. I will be sending your service copy by mail, per our agreement in the Discovery Conference. If you prefer to have email service be an option, let me know. I am out of pocket for the rest of the day too, but look forward to discussing next steps next week. Thanks.
>>
>> -----Original Message-----
>> From: estta-server@uspto.gov [mailto:estta-server@uspto.gov]
>> Sent: Friday, July 18, 2014 11:15 AM
>> To: Patel, Purvi J.; IPDocketing; jcelum@celumlaw.com
>> Subject: ESTTA. Stipulated/Consent Motion. confirmation receipt ID:
>> ESTTA616417
>>
>> Stipulated/Consent Motion.
>>
>> Tracking No: ESTTA616417
>>
>>
>>
>> ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

>>
>> We have received your Stipulated/Consent Motion. submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.
>>
>> Please note:
>>
>> Unless your submission fails to meet the minimum legal requirements for filing, the Board will not cancel the filing or refund any fee paid.
>>
>> If you have a technical question, comment or concern about your ESTTA submission, call 571-272-8500 during business hours or e-mail at estta@uspto.gov.
>>
>> The status of any Board proceeding may be checked using TTABVUE which is available at http://ttabvue.uspto.gov Complete information on Board proceedings is not available through the TESS or TARR databases. Please allow a minimum of 2 business days for TTABVUE to be updated with information on your submission.
>>
>> The Board will consider and take appropriate action on your filing in due course.
>>
>> Printable version of your request is attached to this e-mail
>>
>>
>> ----
>> ESTTA server at http://estta.uspto.gov
>>
>>
>> ESTTA Tracking number: ESTTA616417
>> Filing date: 07/18/2014
>>
>> IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK
>> TRIAL AND APPEAL BOARD
>>
>> Proceeding : 92057941
>> Applicant : Clockwork IP, LLC
>> Other Party:Defendant
>> Barnaby Heating & Air
>>
>>
>> Motion for an Extension of Answer or Discovery or Trial Periods With
>> Consent
>>
>> The Close of Plaintiff's Trial Period is currently set to close on 09/02/2014. Clockwork IP, LLC requests that such date be extended for 60 days, or until 11/01/2014, and that all subsequent dates be reset accordingly.
>> Time to Answer :CLOSED
>> Deadline for Discovery Conference :CLOSED Discovery Opens :CLOSED
>> Initial Disclosures Due :CLOSED Expert Disclosure Due :CLOSED
>> Discovery Closes :CLOSED Plaintiff's Pretrial Disclosures :09/17/2014
>> Plaintiff's 30-day Trial Period Ends :11/01/2014 Defendant's Pretrial
>> Disclosures :11/16/2014 Defendant's 30-day Trial Period Ends
>> :12/31/2014 Plaintiff's Rebuttal Disclosures :01/15/2015 Plaintiff's
>> 15-day Rebuttal Period Ends :02/14/2015

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

| | Untimely request | Confidential | Undue burden > likely benefit | Opportunity to discover on your own | Calls for speculation | Vague, ambiguous (or vague, ambiguous, and confusing) | Not narrowly tailored | Alleges information is available in docs (but refuses to produce docs) | Irrelevant to P's claims | Overly broad and unduly burdensome (or overbroad) | Other? |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Interrogatory 1** Describe in detail how Respondent's Mark was first conceived of by Respondent. | X | X | X | | | | | | | | |
| **Interrogatory 2** State in detail the reasons for Respondent's selection of COMFORTCLUB and the filing of U.S. Registration No. 3,618,331 therefor, the date that Respondent's Mark was selected and cleared, and identify all persons involved in the selection and clearance of Respondent's Mark. | X | X | X | X | X | X | | | | | |
| **Interrogatory 3** State Respondent's annual expenditures in developing and marketing COMFORTCLUB. | X | X | X | X | X | | | | | | |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

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|---|---|---|---|---|---|---|---|---|---|---|---|
| **Interrogatory 4** State Respondent's annual expenditures in developing and marketing COMFORTCLUB. | X | X | X | X | | | X | X | | | |
| **Interrogatory 5** List and describe all Petitioner, SGI, or AirTime events, including without limitation, Success Day and Success Academy sessions, CONGRESS franchise events, SGI EXPO events, BRAND DOMINANCE events, Senior Tech events, and any similar events attended by Respondent since 2006. | X | | | X | X | | | | | | |
| **Interrogatory 6** Describe Respondent's relationship with Petitioner, SGI, and AirTime 500. | X | | | X | X | | | | | | |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

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|---|---|---|---|---|---|---|---|---|---|---|---|
| **Interrogatory 7** Describe and list all agreements between Respondent and Petitioner, Respondent and SGI, Respondent and AirTime 500, including without limitation all Acknowledgements of Non-Solicitation Policy or Confidentiality Agreements executed by Respondent. | X | | | X | X | | | | | | |
| **Interrogatory 8** Describe all goods and services with which Respondent's Mark has been, is intended to be, or is currently used ... | X | | | X | | | | X | | X | |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

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|---|---|---|---|---|---|---|---|---|---|---|---|
| **Interrogatory 9** Describe all facts and identify all documents and things relating to and showing Respondent's use of Respondent's Mark in commerce before and after Mr. Charles Barnaby's execution of the Success Academy "Acknowledgement of Non-Solicitation Policy" dated March 17, 2008. | X | | | X | X | | | | | | |
| **Interrogatory 10** Identify and describe the types of customers to whom Respondent has provided or is providing COMFORTCLUB services | X | | | X | X | | | | | | |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

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|---|---|---|---|---|---|---|---|---|---|---|---|
| **Interrogatory 11** State the annual revenues generated in connection with Respondent's services offered under Respondent's Mark from the date of first use to present. | X | | | X | X | | | | | | |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

| | Untimely request | Confidential | Undue burden > likely benefit | Opportunity to discover on your own | Calls for speculation | Vague, ambiguous (or vague, ambiguous, and confusing) | Not narrowly tailored | Alleges information is available in docs (but refuses to produce docs) | Irrelevant to P's claims | Overly broad and unduly burdensome (or overbroad) | Other? |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Interrogatory 12** State whether any search, inquiry, investigation, or marketing survey has been or is being conducted relating to the availability, registrability, or enforceability of Respondent's Mark and, if so, for each identify all documents relating to the search or investigation including, but not limited to, each report referring to or reflecting the search or investigation. | X | | | X | X | | | | | | |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

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|---|---|---|---|---|---|---|---|---|---|---|---|
| **Interrogatory 13** Describe in detail all instances in which Respondent has received objections or misdirected inquiries regarding its use and/or application for Respondent's Mark. | X | | | X | X | X | | | | | |
| **Interrogatory 14** Describe in detail all facts and identify all documents and things relating to any alleged association between Petitioner and Respondent. | X | | | X | | | | | | | |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

| | Untimely request | Confidential | Undue burden > likely benefit | Opportunity to discover on your own | Calls for speculation | Vague, ambiguous (or vague, ambiguous, and confusing) | Not narrowly tailored | Alleges information is available in docs (but refuses to produce docs) | Irrelevant to P's claims | Overly broad and unduly burdensome (or overbroad) | Other? |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Interrogatory 15** Identify any members of the public known to Respondent to have been or who may have been confused with respect to Respondent's Mark as a result of, or with respect to, the use by Petitioner of the mark COMFORTCLUB | X | | | X | X | X | | | | | |
| **Interrogatory 16** Identify each person that was a potential customer of Respondent who would have received any advertising or marketing material displaying Respondent's Mark | X | | X | X | X | | | | X | X | |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

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|---|---|---|---|---|---|---|---|---|---|---|---|
| **Interrogatory 17** Describe Respondent's present or future plans to market goods and/or services offered under Respondent's Mark beyond the scope of that which Respondent currently offers. | X | | X | X | X | | | | X | X | |
| **Interrogatory 18** State the date of, and describe in detail the circumstance of, when you first became aware of Petitioner's Mark. | X | | X | X | X | | | | X | X | |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

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|---|---|---|---|---|---|---|---|---|---|---|---|
| **Interrogatory 19** State all facts on which Respondent relies in support of the allegation in its application for U.S. Registration No. 3,618,331 that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive...." | X | | X | X | | X | | | X | X | Misleading / intends to mislead |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

| | Untimely request | Confidential | Undue burden > likely benefit | Opportunity to discover on your own | Calls for speculation | Vague, ambiguous (or vague, ambiguous, and confusing) | Not narrowly tailored | Alleges information is available in docs (but refuses to produce docs) | Irrelevant to P's claims | Overly broad and unduly burdensome (or overbroad) | Other? |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Interrogatory 20** State all facts on which Respondent relies in support of the allegation in its application for U.S. Registration No. 3,618,331 for COMFORTCLUB that Respondent was the rightful "owner of the trademark/service mark sought to be registered." | X | | X | X | | X | | | X | X | Misleading / intends to mislead |
| **Interrogatory 21** Identify all interactions Respondent had with Petitioner or Petitioner's legal representatives prior to the filing of its application for U.S. Registration No. 3,618,331. | X | | | X | | X | | | X | X | |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

| | Untimely request | Confidential | Undue burden > likely benefit | Opportunity to discover on your own | Calls for speculation | Vague, ambiguous (or vague, ambiguous, and confusing) | Not narrowly tailored | Alleges information is available in docs (but refuses to produce docs) | Irrelevant to P's claims | Overly broad and unduly burdensome (or overbroad) | Other? |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Interrogatory 22** Describe all facts and identify all documents and things upon which Respondent bases its denials in Respondent's Answer to the Petition to Cancel in this proceeding. | X | | X | | X | | | X | X | X | Asks for opinions; premature until additional discovery is conducted |
| **Interrogatory 23** Describe all facts and identify all documents and things upon which Respondent bases its Affirmative Defenses in Respondent's Answer to the Petition to Cancel in this proceeding. | X | | | | | | | X | | X | |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

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|---|---|---|---|---|---|---|---|---|---|---|---|
| **Interrogatory 24** Describe all facts and identify all documents and things upon which Respondent bases its Affirmative Defenses in Respondent's Answer to the Petition to Cancel in this proceeding. | X | | | | X | | | X | | X | Asks for opinions; premature until additional discovery is conducted |
| **Interrogatory 25** Describe all facts and identify all documents and things upon which Respondent bases its Affirmative Defenses in Respondent's Answer to the Petition to Cancel in this proceeding. | X | | | | X | | | X | | X | Asks for opinions; premature until additional discovery is conducted |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

| | Untimely request | Confidential | Undue burden > likely benefit | Opportunity to discover on your own | Calls for speculation | Vague, ambiguous (or vague, ambiguous, and confusing) | Not narrowly tailored | Alleges information is available in docs (but refuses to produce docs) | Irrelevant to P's claims | Overly broad and unduly burdensome (or overbroad) | Other? |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Interrogatory 26** Identify each person whom Respondent may call to testify on his behalf in this Cancellation. | X | | | | X | | | | | | Calls for trial witness list or disclosure of trial strategies |
| **Interrogatory 27** Describe all facts and identify all documents and things relating to and supporting Respondent's Affirmative Defenses in its Answer to Petitioner's Petition to Cancel. | X | | | | | | X | X | | X | |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

| | Untimely request | Undue burden > likely benefit | Opportunity to discover on your own | Calls for speculation | Vague, ambiguous (or vague, ambiguous, and confusing) | Not narrowly tailored | Refusal to provide narrative where information is available in documents | Irrelevant to P's claims | Overly broad and unduly burdensome (or overbroad) | Other? |
|---|---|---|---|---|---|---|---|---|---|---|
| RFP 1 | X | | | | | X | | | X | Only if Respondent agrees to reopen the discovery period will Petitioner respond, |
| RFP 2 | X | | | | | X | | | X | |
| RFP 3 | X | | | | | X | | | X | |
| RFP 4 | X | | | | | X | | | X | |
| RFP 5 | X | | | | | X | | | X | |
| RFP 6 | X | | | | | X | | | X | |
| RFP 7 | X | | | | | X | | | X | |
| RFP 8 | X | | | | | X | | | X | |
| RFP 9 | X | | | | | X | | | X | |
| RFP 10 | X | | | | | X | | | X | |
| RFP 11 | X | | | | | X | | | X | |
| RFP 12 | X | | | | | X | | | X | |
| RFP 13 | X | | | | | X | | | X | |
| RFP 14 | X | | | | | X | | | X | |
| RFP 15 | X | | | | | X | | | X | |
| RFP 16 | X | | | | | X | | | X | |
| RFP 17 | X | | | | | X | | | X | |
| RFP 18 | X | | | | | X | | | X | |
| RFP 19 | X | | | | | X | | | X | |
| RFP 20 | X | | | | | X | | | X | |
| RFP 21 | X | | | | | X | | | X | |
| RFP 22 | X | | | | | X | | | X | |
| RFP 23 | X | | | | | X | | | X | |

**Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests**

| | Untimely request | Undue burden > likely benefit | Opportunity to discover on your own | Calls for speculation | Vague, ambiguous (or vague, ambiguous, and confusing) | Not narrowly tailored | Refusal to provide narrative where information is available in documents | Irrelevant to P's claims | Overly broad and unduly burdensome (or overbroad) | Other? |
|---|---|---|---|---|---|---|---|---|---|---|
| RFP 24 | X | | | | | X | | | X | Only if Respondent agrees to reopen the discovery period will Petitioner respond, |
| RFP 25 | X | | | | | X | | | X | |
| RFP 26 | X | | | | | X | | | X | |
| RFP 27 | X | | | | | X | | | X | |
| RFP 28 | X | | | | | X | | | X | |
| RFP 29 | X | | | | | X | | | X | |
| RFP 30 | X | | | | | X | | | X | |
| RFP 31 | X | | | | | X | | | X | |
| RFP 32 | X | | | | | X | | | X | |
| RFP 33 | X | | | | | X | | | X | |
| RFP 34 | X | | | | | X | | | X | |
| RFP 35 | X | | | | | X | | | X | |
| RFP 36 | X | | | | | X | | | X | |
| RFP 37 | X | | | | | X | | | X | |
| RFP 38 | X | | | | | X | | | X | |
| RFP 39 | X | | | | | X | | | X | |
| RFP 40 | X | | | | | X | | | X | |
| RFP 41 | X | | | | | X | | | X | |
| RFP 42 | X | | | | | X | | | X | |
| RFP 43 | X | | | | | X | | | X | |
| RFP 44 | X | | | | | X | | | X | |
| RFP 45 | X | | | | | X | | | X | |
| RFP 46 | X | | | | | X | | | X | |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

| | Untimely request | Undue burden > likely benefit | Opportunity to discover on your own | Calls for speculation | Vague, ambiguous (or vague, ambiguous, and confusing) | Not narrowly tailored | Refusal to provide narrative where information is available in documents | Irrelevant to P's claims | Overly broad and unduly burdensome (or overbroad) | Other? |
|---|---|---|---|---|---|---|---|---|---|---|
| RFP 47 | X | | | | | X | | | X | Only if Respondent agrees to reopen the discovery period will Petitioner respond, |
| RFP 48 | X | | | | | X | | | X | |
| RFP 49 | X | | | | | X | | | X | |
| RFP 50 | X | | | | | X | | | X | |
| RFP 51 | X | | | | | X | | | X | |
| RFP 52 | X | | | | | X | | | X | |
| RFP 53 | X | | | | | X | | | X | |
| RFP 54 | X | | | | | X | | | X | |
| RFP 55 | X | | | | | X | | | X | |
| RFP 56 | X | | | | | X | | | X | |
| RFP 57 | X | | | | | X | | | X | |
| RFP 58 | X | | | | | X | | | X | |
| RFP 59 | X | | | | | X | | | X | |
| RFP 60 | X | | | | | X | | | X | |
| RFP 61 | X | | | | | X | | | X | |
| RFP 62 | X | | | | | X | | | X | |
| RFP 63 | X | | | | | X | | | X | |
| RFP 64 | X | | | | | X | | | X | |
| RFP 65 | X | | | | | X | | | X | |
| RFP 66 | X | | | | | X | | | X | |
| RFP 67 | X | | | | | X | | | X | |
| RFP 68 | X | | | | | X | | | X | |
| RFP 69 | X | | | | | X | | | X | |

## Summary of Respondent's *KEY* Deficient Responses and Meritless Objections to Petitioner's Discovery Requests

| | Untimely request | Undue burden > likely benefit | Opportunity to discover on your own | Calls for speculation | Vague, ambiguous (or vague, ambiguous, and confusing) | Not narrowly tailored | Refusal to provide narrative where information is available in documents | Irrelevant to P's claims | Overly broad and unduly burdensome (or overbroad) | Other? |
|---|---|---|---|---|---|---|---|---|---|---|
| RFP 70 | X | | | | | X | | | X | Only if Respondent agrees to reopen the discovery period will Petitioner respond, |
| RFP 71 | X | | | | | X | | | X | |
| RFP 72 | X | | | | | X | | | X | |
| RFP 73 | X | | | | | X | | | X | |
| RFP 74 | X | | | | | X | | | X | |
| RFP 75 | X | | | | | X | | | X | |
| RFP 76 | X | | | | | X | | | X | |
| RFP 77 | X | | | | | X | | | X | |
| RFP 78 | X | | | | | X | | | X | |
| RFP 79 | X | | | | | X | | | X | |
| RFP 80 | X | | | | | X | | | X | |
| RFP 81 | X | | | | | X | | | X | |
| RFP 82 | X | | | | | X | | | X | |
| RFP 83 | X | | | | | X | | | X | |
| RFP 84 | X | | | | | X | | | X | |
| RFP 85 | X | | | | | X | | | X | |
| RFP 86 | X | | | | | X | | | X | |
| RFP 87 | X | | | | | X | | | X | |
| RFP 88 | X | | | | | X | | | X | |
| RFP 89 | X | | | | | X | | | X | |
| RFP 90 | X | | | | | X | | | X | |

# EXHIBIT J

## Patel, Purvi J.

**From:** Julie Celum Garrigue <jcelum@celumlaw.com>
**Sent:** Wednesday, September 17, 2014 8:30 AM
**To:** Patel, Purvi J.
**Cc:** Graves, George; IPDocketing; Noel, Debra
**Subject:** Re: Assignment - Joinder and Motion to Reset the Current Deadlines

Purvi,

Nothing in my email below suggested that we would not be honoring our agreement.

Julie Celum Garrigue

Celum Law Firm, PLLC
11700 Preston Rd., Suite 660, PMB 560
Dallas, TX 75230

P: 214-334-6065
F: 214-504-2289
E: jcelum@celumlaw.com



On Sep 16, 2014, at 7:47 PM, Patel, Purvi J. <Purvi.Patel@haynesboone.com> wrote:

We do not consent to your proposed motion. Will you be responding to our discovery requests by the agreed to date?

Sent from my iPhone

> On Sep 16, 2014, at 5:40 PM, "Julie Celum Garrigue" <jcelum@celumlaw.com> wrote:
>
> Purvi,
>
> We are recording the appropriate assignment documents tomorrow and will notify the Board.
>
> We intend on filing a joinder combined with our motion to reopen discovery/reset the current deadlines.
>
> Please let me know whether you consent to such motion.
>
> Julie Celum Garrigue
>
> Celum Law Firm, PLLC
> 11700 Preston Rd., Suite 660, PMB 560
> Dallas, TX 75230
>
> P: 214-334-6065

> F: 214-504-2289
> E: jcelum@celumlaw.com
>
> This electronic message contains information from the CELUM LAW FIRM, PLLC that may be privileged and confidential attorney work product or attorney/client communication. The information is intended to be for the use of the addressee only. If you are not the addressee, note that any disclosure, copying, distribution or use of the contents of this message is prohibited. If you received this message in error, please notify the sender immediately.
>
> On Sep 12, 2014, at 6:02 PM, Patel, Purvi J. <Purvi.Patel@haynesboone.com> wrote:
>
> Julie - Further to our discussion, please see the attached.
>
> -----Original Message-----
> From: Patel, Purvi J.
> Sent: Friday, September 12, 2014 5:16 PM
> To: 'jcelum@celumlaw.com'
> Cc: Graves, George; IPDocketing; Noel, Debra
> Subject: Follow up on 9/12/2014 Conference
>
> Julie - Further to our call today, you agree to supplement Barnaby's discovery responses and make responsive documents available to us by no later than September 24, 2014. I understand that you would prefer to review my letter and related grid as opposed to walking through each one over the phone, but will contact me if you have any questions/require any clarification (though the original requests were quite narrow/targeted, so I am optimistic that you will substantively respond to each request by the stated deadline).
>
> We also agreed to a 45 day extension of all *future* deadlines in the pending cancellation proceeding, and I am proceeding with preparing and filing that today. Note that Clockwork is *not* agreeing to open any past/closed deadlines in the Scheduling Order. We both agree that email service of the extension and your correspondence regarding discovery is acceptable. In that regard, I ask that you also cc Ipdocketing@haynesboone.com, just to ensure that all emails come through. If you would like for me to cc an associate or your assistant as well, please let me know.
>
> If Barnaby's September 24, 2014 discovery responses remain deficient/non-responsive, we both understand that TTAB intervention/other escalation may be necessary. Thanks.
>
> Purvi Patel Albers
> Partner
> purvi.patel@haynesboone.com
>
> Haynes and Boone, LLP
> 2323 Victory Avenue
> Suite 700
> Dallas, TX 75219-7673
>
> (t) 214.651.5917
> (f) 214.200.0812
>
> vCard | Bio | Website
>
> -----Original Message-----
> From: jcelum@celumlaw.com [mailto:jcelum@celumlaw.com]
> Sent: Friday, September 12, 2014 11:52 AM
> To: Patel, Purvi J.

> Subject: Re: ESTTA. Stipulated/Consent Motion. confirmation receipt
> ID: ESTTA616417
>
> Purvi,
>
> Seriously? We have already scheduled this conference for today at 4:30. It has been on my calendar since we spoke at 5:45 on Wednesday of this week.
>
> I will respond to your issues and allegations at that time and follow up to all with a formal response following our conference this afternoon.
>
>
> Julie Celum Garrigue
> 214-334-6065
>
>
>
>> On Sep 12, 2014, at 11:44 AM, "Patel, Purvi J." <Purvi.Patel@haynesboone.com> wrote:
>>
>> Julie - I have not received a response to my below correspondence, so please advise whether you are available for our discovery conference today. Attached is the grid of the key objections for discussion during our call. In light of all of the issues at hand, the call will probably take at least 1.5 hours.
>>
>> -----Original Message-----
>> From: Patel, Purvi J.
>> Sent: Thursday, September 11, 2014 12:27 PM
>> To: 'jcelum@celumlaw.com'
>> Subject: RE: ESTTA. Stipulated/Consent Motion. confirmation receipt
>> ID: ESTTA616417
>>
>> Julie - Following up, I located the attached email you sent on August 13, 2014 -- I was out of the office for my wedding that week. Upon my return, I reviewed the attachment whereby you wanted to confirm email service, but since we had already agreed to email service, I viewed it as redundant. Since that time, we have only corresponded via email, so I am not sure what your concern is on that point. On the remainder, as I've stated numerous times, your discovery deadline was July 15th and your obligation was continuing to respond appropriately - and we were not amenable to yet another extension, mainly because your original responses were so egregiously deficient in the first place and suggested no intention to comply. If we can get your clarification on our inquiries below at your earliest convenience, that would be helpful. Note that I will be out of the office next Monday and Tuesday for the INTA (International Trademark Association) Board Meeting in DC.
>>
>> -----Original Message-----
>> From: Patel, Purvi J.
>> Sent: Thursday, September 11, 2014 8:54 AM
>> To: 'jcelum@celumlaw.com'
>> Subject: RE: ESTTA. Stipulated/Consent Motion. confirmation receipt
>> ID: ESTTA616417
>>
>> Julie -
>>
>> 1. I need to look into what August 13, 2014 correspondence you are referring to, but during our call in July, it was my understanding that we agreed to provide all correspondence as a courtesy via email and we could decide if we wanted to continue to also provide a first class mail copy. I am not aware of a request on your part regarding an

extension of discovery deadlines and will look for that correspondence and be in touch. Did you send that via email as well? If so, if you could resend it to make sure we are looking at the same document, that would be appreciated.
>>
>> 2. My client is unclear about the August 8, 2014 letter you are referring to. Note that even if we did know what you were talking about, Barnaby served no discovery and we had no obligation to voluntarily supply any information - especially since Barnaby had yet to respond to any of Clockwork's properly served discovery requests. My client has concealed nothing from you, and its dates of first use are accurate and true. The fact that your client's stated date of first use of COMFORTCLUB is the day he attended a seminar held by my client where Clockwork promoted COMFORTCLUB is the problematic fact here and truly supports fraud on the Trademark Office - so if anyone is misleading here, it is Barnaby. If you have some sort of evidence that any documents that Clockwork voluntarily provided to you are not authentic (which I doubt you do), that is something that you would have had to disclose in your discovery responses - so this is all news to us, so we ask that you comprehensively respond to our discovery requests so we don't receive any more surprises regarding your client's false allegations.
>>
>> 3. Everything we have served or communicated on behalf of Clockwork has been timely, and you know this as fact. Our client properly served its discovery requests during the discovery period (on the last day) and served it upon you via certified mail. You admitted that there the mail was misrouted in your office building, and since you allegedly did not receive it for 2 weeks, we graciously provided you with a 15 day extension to respond. Your latest round of contentions questioning my integrity in signing the Certificate of Service is truly unprofessional ... and frankly a misrepresentation of fact. I have correspondence from you with both versions of your story on the discovery. I am so confounded by this line of discussions because as I indicated, we graciously granted you a 15 day extension to respond, and yet, when you did respond, all of your discovery responses were deficient. Our extension was indeed reciprocal to the delay you allege - and at this point, based on the baseless accusations you are currently making, I truly wonder whether you timely received the requests and just used the "wrong office error" to stall.
>>
>> 4. I am also confused about your issue with the extension of deadlines. We agreed to a 60 day extension of TTAB deadlines, and that is what we did -- we discussed this, we have correspondence between us confirming this, and I served the 60 day extension upon you immediately upon filing -- so you are well aware of where we stood, and now, again, you are misrepresenting facts about what we agreed to do. I am not really clear on what you are upset about on this front, so I need for you to elaborate here - what did you understand the extension of deadlines to mean? We never talked about going back in time to reopen dates ... and your discovery response deadline certainly never tracked anything in the Scheduling Order. After we spoke about your insufficient responses to Clockwork's discovery, you provided confirmation that you would be working with your client to provide more responsive information -- we did not provide a set deadline, and it was somewhat fluid, but we did not grant 60 days. Having said this, if you are asking for additional time to respond to discovery, we will provide a 15 day extension if we all agree to a 45 day extension of TTAB deadlines. That way, we can review your discovery responses and prepare our Pretrial Disclosures.
>>
>> 5. I don't know how you can extend deadlines without our consent, but we had agreed to a 30 day extension and were asking for your agreement of the same thing -- so, again, I am confused about what you are seeking. There is no "continuance" option in the TTAB world, so if you could clarify what you are seeking to do with the TTAB, that would be helpful. Your motion is a waste of money and will be denied because the facts clearly favor our timely service of discovery, our attempts to amicably resolve this matter, our good faith efforts to seek useful discovery responses by providing extensions of time, etc. It is Barnaby that has failed to be responsive or amenable to meaningful settlement discussions, and any filing you make with the Board will make this crystal clear -- unless you decide to misrepresent additional facts in your Motion, of course.
>>
>> 6. Am I to take all this to mean that you are not willing to have a conference on Friday to discuss deficient responses and that you are not willing to grant a 30 day extension of deadlines, but instead want to move, without our consent, for a continuance? Please clarify where you stand, and we will proceed accordingly.
>>
>> Purvi Patel Albers
>> Partner

>> purvi.patel@haynesboone.com
>>
>> Haynes and Boone, LLP
>> 2323 Victory Avenue
>> Suite 700
>> Dallas, TX 75219-7673
>>
>> (t) 214.651.5917
>> (f) 214.200.0812
>>
>> vCard | Bio | Website
>>
>>
>>
>>
>> -----Original Message-----
>> From: jcelum@celumlaw.com [mailto:jcelum@celumlaw.com]
>> Sent: Wednesday, September 10, 2014 11:42 PM
>> To: Patel, Purvi J.
>> Subject: Re: ESTTA. Stipulated/Consent Motion. confirmation receipt
>> ID: ESTTA616417
>>
>> Purvi,
>>
>> And with all of this, do you pretend not to have received my correspondence relating to our discussions regarding service via email and an extension of the discovery deadline in this case? I have not received a response from you, or your office, regarding my written request, dated August 13, 2014.
>>
>> Also, your client sent a cease & desist to a third-party on August 8, 2014, requesting they cease use of the COMFORTCLUB mark. Thus, you have kept this information secret for over 1 month, and failed to disclose your client's knowledge about this concurrent use to either my firm, or the Board.
>>
>> Our position has not changed since you served discovery requests - !!14+ days outside the discovery period!! - and you have not agreed to a reciprocal extension of the discovery deadline.
>>
>> Do not threaten my client with sanctions, when your client conceals relevant facts and necessary a parties, and my written communications to you and your firm go unanswered. It is you who has procrastinated, failed to disclose relevant evidence and information, and caused further delay.
>>
>> Your client has misrepresented its date of first use in its initial trademark application and its petition for cancellation. We also have evidence that suggests that the documents you produced to my office last month indicating a date of first use are not authentic.
>>
>> Furthermore, there is very newly discovered evidence that your client has sent a written communication to a third-party licensee of the COMFORTCLUB mark. Given these new developments and your lack of communication to my written correspondence, we are moving for a continuance of all of the deadlines, and will be filing a motion to join a necessary third-party immediately upon the recording of the assignment.
>>
>>
>>
>> Julie Celum Garrigue
>> 214-334-6065

>>
>>
>>
>>> On Sep 10, 2014, at 6:38 PM, "Patel, Purvi J." <Purvi.Patel@haynesboone.com> wrote:
>>>
>>> Correct - the extension I filed and that we agreed to was an extension of all deadlines with the TTAB (chain attached). Discovery had already closed when we had our discussion, but Clockwork's discovery requests were served within the period (as explained previously in our various communications, as well as in detail in my formal correspondence to you earlier today). Your client's obligation to respond to discovery served within the discovery period continued (the close of the discovery period does not obviate that requirement. Moreover, Clockwork consented to a July 15, 2014 extension to Barnaby for purposes of submitting responses and responsive documents. Your July 15th communication/objections were not responsive -- and rather, Barnaby's discovery responses were woefully deficient and your objections were without merit. In your July 18, 2014 email (attached), you indicated that you would move forward with providing more substantive discovery responses, but we have not received any additional information to date. Now, once again, we are coming upon the pretrial disclosure deadline and we still do not have a single responsive document or response from you. In light of this, absent an additional 30 day extension during which you properly reply to our discovery requests/make documents and things available for our review, Clockwork is left with no choice but to proceed with a Motion to Compel and for Sanctions. As you well know, the TTAB does not view a failure to respond to discovery kindly, and would likely grant sanctions in this case. Since this proceeding does not seem to be moving forward, and Clockwork has tried to amicably resolve this dispute while receiving wholesale refusals from Barnaby, my client is seriously considering whether TTAB intervention or federal court involvement makes more sense at this point.
>>>
>>> We will expect to hear from you regarding the extension of deadlines by early Friday AM. We will get started on our Motion in the meantime. I look forward to our Friday afternoon call at 4:30 -- I will call you.
>>>
>>> -----Original Message-----
>>> From: jcelum@celumlaw.com [mailto:jcelum@celumlaw.com]
>>> Sent: Wednesday, September 10, 2014 6:07 PM
>>> To: Patel, Purvi J.
>>> Subject: Re: ESTTA. Stipulated/Consent Motion. confirmation receipt
>>> ID: ESTTA616417
>>>
>>> Purvi,
>>>
>>> The stipulation you filed only extended pretrial disclosures. It did not extend discovery.
>>>
>>> Also, the letter your client sent was dated August 8th. I want to be clear that I did not receive the letter until some time after. Wasn't sure if I made that clear when we spoke moments ago.
>>>
>>> Julie Celum Garrigue
>>> 214-334-6065
>>>
>>>
>>>
>>>> On Jul 18, 2014, at 11:17 AM, "Patel, Purvi J." <Purvi.Patel@haynesboone.com> wrote:
>>>>
>>>> Julie - Here is the 60 Day Stipulated Extension Request as filed with the PTO. I will be sending your service copy by mail, per our agreement in the Discovery Conference. If you prefer to have email service be an option, let me know. I am out of pocket for the rest of the day too, but look forward to discussing next steps next week. Thanks.
>>>>
>>>> -----Original Message-----

>>>> From: estta-server@uspto.gov [mailto:estta-server@uspto.gov]
>>>> Sent: Friday, July 18, 2014 11:15 AM
>>>> To: Patel, Purvi J.; IPDocketing; jcelum@celumlaw.com
>>>> Subject: ESTTA. Stipulated/Consent Motion. confirmation receipt ID:
>>>> ESTTA616417
>>>>
>>>> Stipulated/Consent Motion.
>>>>
>>>> Tracking No: ESTTA616417
>>>>
>>>>
>>>>
>>>> ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt
>>>>
>>>> We have received your Stipulated/Consent Motion. submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.
>>>>
>>>> Please note:
>>>>
>>>> Unless your submission fails to meet the minimum legal requirements for filing, the Board will not cancel the filing or refund any fee paid.
>>>>
>>>> If you have a technical question, comment or concern about your ESTTA submission, call 571-272-8500 during business hours or e-mail at estta@uspto.gov.
>>>>
>>>> The status of any Board proceeding may be checked using TTABVUE which is available at http://ttabvue.uspto.gov Complete information on Board proceedings is not available through the TESS or TARR databases. Please allow a minimum of 2 business days for TTABVUE to be updated with information on your submission.
>>>>
>>>> The Board will consider and take appropriate action on your filing in due course.
>>>>
>>>> Printable version of your request is attached to this e-mail
>>>>
>>>>
>>>> ----
>>>> ESTTA server at http://estta.uspto.gov
>>>>
>>>>
>>>> ESTTA Tracking number: ESTTA616417
>>>> Filing date: 07/18/2014
>>>>
>>>> IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
>>>> TRADEMARK TRIAL AND APPEAL BOARD
>>>>
>>>> Proceeding : 92057941
>>>> Applicant : Clockwork IP, LLC
>>>> Other Party:Defendant
>>>> Barnaby Heating & Air
>>>>
>>>>

>>>> Motion for an Extension of Answer or Discovery or Trial Periods
>>>> With Consent
>>>>
>>>> The Close of Plaintiff's Trial Period is currently set to close on 09/02/2014. Clockwork IP, LLC requests that such date be extended for 60 days, or until 11/01/2014, and that all subsequent dates be reset accordingly.
>>>> Time to Answer :CLOSED
>>>> Deadline for Discovery Conference :CLOSED Discovery Opens :CLOSED
>>>> Initial Disclosures Due :CLOSED Expert Disclosure Due :CLOSED
>>>> Discovery Closes :CLOSED Plaintiff's Pretrial Disclosures
>>>> :09/17/2014 Plaintiff's 30-day Trial Period Ends :11/01/2014
>>>> Defendant's Pretrial Disclosures :11/16/2014 Defendant's 30-day
>>>> Trial Period Ends
>>>> :12/31/2014 Plaintiff's Rebuttal Disclosures :01/15/2015
>>>> Plaintiff's 15-day Rebuttal Period Ends :02/14/2015
>>>>
>>>>
>>>> The grounds for this request are as follows:
>>>> Parties are unable to complete discovery/testimony during assigned
>>>> period Parties are engaged in settlement discussions
>>>>
>>>> Clockwork IP, LLC has secured the express consent of all parties to this proceeding for the extension and resetting of dates requested herein.
>>>> Clockwork IP, LLC has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.
>>>>
>>>> Certificate of Service
>>>>
>>>> The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address of record by First Class Mail on this date.
>>>>
>>>> Respectfully submitted,
>>>> /Purvi J. Patel/
>>>> Purvi J. Patel
>>>> patelp@haynesboone.com, ipdocketing@haynesboone.com
>>>> jcelum@celumlaw.com
>>>> 07/18/2014
>>>>
>>>>
>>>>
>>>>
>>>> CONFIDENTIALITY NOTICE: This electronic mail transmission is
>>>> confidential, may be privileged and should be read or retained only
>>>> by the intended recipient. If you have received this transmission
>>>> in error, please immediately notify the sender and delete it from your system.
>>>
>>>
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>>>
>>> CONFIDENTIALITY NOTICE: This electronic mail transmission is
>>> confidential, may be privileged and should be read or retained only
>>> by the intended recipient. If you have received this transmission in
>>> error, please immediately notify the sender and delete it from your system.

>>>
>>>
>>> <mime-attachment>
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>>
>> CONFIDENTIALITY NOTICE: This electronic mail transmission is
>> confidential, may be privileged and should be read or retained only
>> by the intended recipient. If you have received this transmission in
>> error, please immediately notify the sender and delete it from your system.
>>
>>
>> <2303040_1.pdf>
>
>
>
>
> CONFIDENTIALITY NOTICE: This electronic mail transmission is
> confidential, may be privileged and should be read or retained only by
> the intended recipient. If you have received this transmission in
> error, please immediately notify the sender and delete it from your system.
>
>
> <Mail Attachment.eml><20140912175725484.pdf>
>

# EXHIBIT K

# ASSIGNMENT OF TRADEMARK REGISTRATION

| | |
|---|---|
| Mark: | COMFORTCLUB |
| Registration No.: | 3618331 |
| Registration Date: | May 12, 2009 |
| Assignor: | Barnaby Heating & Air LLC |
| Address: | 4620 Industrial St., Ste. C, Rowlett, Texas 75088 |
| Assignee: | McAfee Heating and Air Conditioning Co., Inc. |
| Address: | 4770 Hempstead Station Dr., Kettering, Ohio 45429 |

This Trademark Assignment is made and effective as of the ____ date of _____, 2014, by and between Barnaby Heating & Air LLC ("Assignor") and McAfee Heating and Air Conditioning Co., Inc. ("Assignee").

WHEREAS, Assignor obtained a federal trademark registration on May 12, 2009;

WHEREAS, Assignor and Assignee entered into a certain Trademark License Agreement effective the ___ day of August, 2014 (the "License Agreement") which, among other provisions, grants certain licenses to Assignor to use the Mark;

WHEREAS Assignee desires to acquire all of Assignor's right, title and interest, in and to the Mark together with all the goodwill symbolized thereby, and Assignor desires to assign all such right, title and interest in and to the Mark to Assignee, upon the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by Assignor, the parties agree as follows:

1. Assignor hereby conveys and assigns to Assignee, and Assignee hereby accepts from Assignor, all of Assignor's right, title and interest in and to the Mark, together with the goodwill of the business symbolized by the Mark.

2. Assignor represents and warrants that:

(i) Assignor owns the entire right, title and interest in and to the Mark;

(ii) the registration for the Mark is currently valid and subsisting and in full force and effect;

(iii) Assignor has not licensed the Mark to any other person or entity or granted, either expressly or impliedly, any trademark right with respect to the Mark to any other person or entity;

(iv) there are no liens or security interests against the Mark; and

(v) Assignor has all authority necessary to enter into this Agreement and the execution and delivery of this Agreement has been duly and validly authorized.

3. Assignor shall execute and deliver to Assignee on or before the Effective Date the Trademark Assignment in the form shown in Exhibit B. Assignor further agrees to assist Assignee and to provide such reasonable cooperation and assistance to Assignee, at Assignee's expense, as Assignee may reasonably deem necessary and desirable in exercising and enforcing Assignee's rights in the Mark.

4. After the Effective Date, Assignor agrees to use the Mark only as expressly authorized by Assignee in accordance with the License Agreement, and so long as it is in accordance with the License Agreement, Assignor agrees to not challenge Assignee's use or ownership, or the validity, of the Mark.

5. This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their successors and assigns, if any.

6. Miscellaneous.

(a) This Agreement, Exhibit A, and the Trademark Assignment whose form is shown in Exhibit B constitute the entire agreement of the parties with regard to the subject matter hereof. No modifications of or additions to this Agreement shall have effect unless in writing and properly executed by both parties, making specific reference to this Agreement by date, parties, and subject matter.

(b) This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of Texas or Ohio, without regard to its conflict of laws principles, and shall be enforceable against the parties in the courts of Texas or Ohio. For such purpose, each party hereby irrevocably submits to the jurisdiction of such courts, and agrees that all claims in respect of this Agreement may be heard and determined in any of such courts.

(c) This Agreement may be signed by each party separately, in which case attachment of all of the parties' signature pages to this Agreement shall constitute a fully-executed agreement.

(d) This Agreement may be amended only by a written agreement signed by both parties which explicitly adjoins itself to this agreement.

(e) Any provision of this Agreement that is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions of this Agreement in such jurisdiction or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction.

(f) Assignor and Assignee agree to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year above written.

| **ASSIGNOR:** | **ASSIGNEE:** |
|---|---|
| **Barnaby Heating & Air, LLC** | **McAfee Heating and Air Conditioning, Inc.** |
| By: _____ | By: _____ |
| Name: Charlie Barnaby | Name: Greg McAfee |
| Title: _____ | Title: _____ |

STATE OF TEXAS §
§
COUNTY OF DALLAS §

**BEFORE ME,** the undersigned, a Notary Public in and for said County and State, on this day personally appeared Charlie Barnaby, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed this document and that he executed the same for the purposes and consideration therein expressed.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE,** this _____day of August, 2014.

_____
Notary Public, State of Texas

Barnaby Heating & Air, LLC

_____

STATE OF OHIO §
§
COUNTY OF _____ §

**BEFORE ME,** the undersigned, a Notary Public in and for said County and State, on this day personally appeared Greg McAfee, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed this document and that he executed the same for the purposes and consideration therein expressed.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE,** this _____day of August, 2014.

_____
Notary Public, State of Ohio

McAfee Heating and Air Conditioning, Inc.

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# TRADEMARK LICENSE AGREEMENT

THIS AGREEMENT is effective this ___ day of August, 2014 by and between Barnaby Heating & Air LLC, a Texas Limited Liability Company, having its principal place of business at 4620 Industrial Street, Suite C, Rowlett, TX 75088 (hereinafter "Barnaby") and McAfee Heating & Air Conditioning Co., Inc., an Ohio corporation, having its principal place of business at 4770 Hempstead Station Drive, Kettering, OH 45429 (hereinafter "McAfee").

WHEREAS, Barnaby is the owner of the federal trademark COMFORTCLUB, U.S. Registration No. 3,618,331, (hereinafter referred to as COMFORTCLUB or the Mark) thereof for prepaid preventive maintenance service plans for heating, ventilating and air conditioning systems as set forth in Exhibit A);

WHEREAS, since at least as early as 1999, McAfee has used and is using COMFORT CLUB in connection with prepaid preventive maintenance service plans for heating, ventilating and air conditioning systems;

WHEREAS, McAfee has acquired the COMFORTCLUB trademark, including U.S. Registration No. 3,618,331, for good and valuable consideration, and is willing to grant to Barnaby a license to use the COMFORTCLUB trademark in connection with prepaid preventive maintenance service plans for heating, ventilating and air conditioning systems (the "Licensed Services"), on the following terms and conditions;

NOW THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties agree to follows:

1. Assignment.

By assignment, Barnaby hereby has transferred and assigned to McAfee all right, title and interest it possesses in the COMFORTCLUB trademark, including U.S. Registration No. 3,618,331, together with the goodwill in connection with which the mark has been used as set forth in Exhibit B. Barnaby further transfers and assigns to McAfee all causes of action, rights and remedies arising under the COMFORTCLUB trademark after the effective date of this Agreement, with the exception of the Clockwork action currently before the Trademark Trial and Appeal Board, such action McAfee intends to be joined with Barnaby upon the grant of an agreed Motion to Join.

2. Grant.

McAfee hereby grants to Barnaby, subject to the following terms and conditions, an exclusive, royalty-free right to use the COMFORTCLUB trademark in connection with the Licensed Services within and limited to 90 miles from Dallas, Texas, including all of Collin, Dallas, Rockwall and Tarrant Counties, Texas. Barnaby shall have no right to license or sublicense the Mark.

Notwithstanding the exclusive character of the license granted in this Agreement, Barnaby shall take such license subject to the rights in one (1) third party, located in Waco, Texas, established by a licensing agreement entered into by McAfee prior to the date of this Agreement. In this connection, McAfee represents that no rights have been granted to others in the State of Texas to the Mark and the Licensed Services that are the subject matter of this Agreement and that no licenses have been granted affecting the subject matter of such Mark and Licensed Services that would in its judgment significantly diminish the value of the rights herein conveyed.

McAfee has noted and Barnaby recognizes and accepts the possible existence, in reference to the particular Mark and Licensed Services, of the prior licenses granted by McAfee to third parties that may be inconsistent in some respects with the commitments of this Agreement, but McAfee represents and warrants that it has accepted no commitments or restrictions that will materially affect the value of the license and rights granted by it in this Agreement.

3. Use of the Mark.

Barnaby shall continue to use the COMFORTCLUB trademark in the manner in which it is using the trademark as of the effective date of this Agreement.

Barnaby shall include in and/on all advertising and promotional material, and other printed material, and on its Web site or in other electronic media, the following legend or such other legend as McAfee may from time to time require:

*COMFORTCLUB ® is a trademark of McAfee Heating & Air Conditioning Co., Inc., used under license.*

Barnaby agrees that it shall use the COMFORTCLUB trademark only in such form and manner as may be approved by McAfee. All advertising, promotion and other use of the COMFORTCLUB trademark will be in good taste and in such manner as will maintain and enhance the value of the COMFORTCLUB trademark and McAfee's reputation for high quality.

McAfee acknowledges that the manner in which Barnaby uses the COMFORTCLUB trademark in its advertising as of the date of this Agreement is acceptable to McAfee.

Before releasing any labeling, advertising, promotional or other material which departs materially from the manner in which Barnaby currently uses the COMFORTCLUB trademark, Barnaby shall submit to McAfee for its approval, a sample of each such new intended use of the COMFORTCLUB trademark, sufficiently far in advance to permit McAfee to review the form and manner in which the COMFORTCLUB trademark is displayed. However, McAfee shall not unreasonably withhold its approval, and any sample or example of art work submitted to McAfee hereunder which has not been disapproved within fifteen (15) days after receipt thereof shall be deemed to have been approved.

4. Quality Control.

McAfee has inspected the services that Barnaby is currently providing in connection with the COMFORTCLUB trademark and acknowledges that these services are of high quality and are appropriate for sale under the COMFORTCLUB trademark. Barnaby agrees to maintain the standard of quality of the services it provides in connection with the COMFORTCLUB trademark. If, in the future, Barnaby wishes to change or modify any of the Licensed Services it advertises, offers for sale, sells or distributes in connection with the COMFORTCLUB trademark, Barnaby, without charge and prior to any such advertisement, offer for sale, sale, or distribution, shall submit to McAfee for inspection such modified or changed services. McAfee shall have thirty (30) working days following its receipt of the submission within which to object in writing to Barnaby's proposed changes. If McAfee fails to object to the changed or modified service within thirty (30) working days, McAfee shall be deemed to have consented to Barnaby's modification. McAfee's consent to any changes or modifications to any of the Licensed Services shall not be unreasonably withheld. Barnaby may not offer for sale, sell or distribute any Licensed Services to which McAfee has objected in writing pursuant to this paragraph.

During the term of this Agreement, Barnaby shall, in all advertisements, marketing, and all other materials bearing the Mark, use the registered trademark symbol indicating that it is a registered trademark.

During the term of this Agreement and thereafter Barnaby shall not use the Mark (i) as a portion of or in combination with any other trademarks, or (ii) as all or part of a corporate name, trade name or any other designation used by Barnaby to identify its products, services, or

business. Both during and after the term of this Agreement, neither Barnaby nor any parent, subsidiary, affiliated, or related company, nor any person or entity owned or controlled by Barnaby or under common ownership or control as Barnaby, shall use any name, trademark, service mark, trade name, trade dress, or logo, which, in McAfee's sole opinion, is confusingly similar or identical to the Mark.

5. Ownership of the Mark.

Barnaby acknowledges that McAfee is the exclusive owner of the entire right, title and interest in and to the COMFORTCLUB trademark, U.S. Registration No. 3,618,331, in the United States together with the goodwill therein. Barnaby further acknowledges that its future use of the COMFORTCLUB trademark creates in Barnaby no rights in that Mark, and that all use of the COMFORTCLUB trademark by Barnaby shall inure to the benefit of McAfee. Barnaby shall not challenge or, directly or indirectly, assert any right, title or interest in or to the COMFORTCLUB trademark or any variation thereof, or any registration thereof or application for registration thereof.

At the request of McAfee and at McAfee's expense, Barnaby shall execute and deliver all documents which McAfee deems necessary or appropriate to transfer, obtain or maintain any federal trademark registration of the COMFORTCLUB trademark.

6. Infringement.

Barnaby shall promptly inform McAfee in writing of: (1) any infringement or instance of unfair competition involving the COMFORTCLUB trademark of which Barnaby becomes aware, (2) any challenge to Barnaby's use of the COMFORTCLUB trademark, and (3) any claim by any person of any rights in the COMFORTCLUB trademark (collectively, an Infringing Act).

McAfee shall have the right, but not the obligation, in its sole discretion, to take such action in response to an Infringing Act as it deems appropriate. Barnaby shall assist and cooperate with McAfee by furnishing documentary evidence and oral testimony relating to Barnaby's use of the COMFORTCLUB trademark, not only pursuant to this Agreement, but also as a predecessor in title to the COMFORTCLUB trademark for the Licensed Services. At McAfee's request and expense, Barnaby agrees to be joined as a party in any action instituted by McAfee concerning the protection of the COMFORTCLUB trademark. Barnaby shall have no authority to enforce the rights of McAfee, nor shall Barnaby have any right to demand or control any action taken or proposed to be taken by McAfee to enforce such rights.

If third parties without a license to the Mark and the Licensed Services shall commit an Infringing Act and provide services under the Mark coming within the definition of Licensed Services, and if:

(1) Barnaby shall give McAfee written notice of such infringement; and

(2) Barnaby shall request in writing that suit be brought against such third party for the Mark so infringed; and

(3) Barnaby supplies McAfee with an opinion from the Celum Law Firm, PLLC that such third party is infringing the Mark; and

(4) McAfee fails to bring such suit or obtain discontinuance of such infringement within ninety (90) days after receipt of Barnaby's written notice of such infringement,

then, in such case, Barnaby, after obtaining McAfee's written authorization to do so, shall have the right to file suit against an infringer, in the name of McAfee and at Barnaby's expense and for Barnaby's benefit. McAfee consents to be a party and to cooperate with Barnaby in any such suit brought by Barnaby pursuant to this paragraph.

7. Indemnification.

(A) To the fullest extent permitted by applicable law, McAfee expressly agrees to defend (at McAfee's expense), indemnify, and save and hold harmless Barnaby and all of its officers, directors, shareholders, employees, agents, successors, and assigns, from and against any and all claims, suits, losses, causes of action, damages, liabilities, and expenses of any kind whatsoever, including without limitation, all expenses of litigation and arbitration, court costs and attorney's fees, arising during or on account of or in connection with alleged infringement of the COMFORTCLUB trademark or alleged wrongful use of the COMFORTCLUB trademark as contemplated by this Agreement.

(B) The obligations of McAfee as stated in paragraph (A), above, apply only if Barnaby shall (1) notify McAfee in writing of such claims within 10 business days of learning of such claim, (2) McAfee is given exclusive control of the defense of such claims and all negotiations relating to any settlement, and (3) Barnaby assists McAfee in all necessary respects in conduct of the suit.

(C) McAfee shall not indemnify Barnaby for expenses incurred as part of the ongoing dispute with Clockwork IP, LLC. The parties expressly agree that they will assist one another in

all necessary respects in conduct of the suit and will be responsible for their own attorney's fees.

(D) McAfee shall defend any and all future intellectual property suits, and indemnify Barnaby for any resulting loss and hold Barnaby harmless from any liability, including costs and expenses, and reasonable attorney's fees, for the infringement of any intellectual property arising on account of or in connection with this Agreement, including any claims for royalties or profits of Barnaby, whether or not said claims be asserted by the owner of the intellectual property, parties or third-parties.

(E) Barnaby shall indemnify and hold McAfee harmless from and against any claim, suit, loss, damage, or expense (including without limitation reasonable attorneys' fees) arising out of or relating to any breach of Barnaby's representations and warranties, or arising out of or relating to the manufacture, marketing, distribution, advertising, promotion or sale of any product or service bearing the Mark, including without limitation, products liability claims, or any other breach of this Agreement, or arising out of the gross negligence of Barnaby or its officers, directors, shareholders, employees, agents, successors, and assigns. In the event of Barnaby's misuse of the Mark, Barnaby shall be responsible for the fees and expenses associated with any legal action or challenge.

8. Termination.

McAfee may terminate this Agreement by providing Barnaby written notice of termination upon the occurrence of the following:

(1) Barnaby's failure to cure any breach or default under this Agreement within thirty (30) days after receiving written notice thereof from McAfee;

(2) Barnaby's assignment of its assets or business for the benefit of creditors, or the appointment of a trustee or receiver to administer Barnaby's business or affairs, or the filing of a voluntary or involuntary bankruptcy petition against Barnaby; or

(3) Barnaby's failure to make regular commercial use of the COMFORTCLUB trademark in connection with the Licensed Services for a period of at least three (3) consecutive years.

Upon the termination of this Agreement, Barnaby shall discontinue all use of the COMFORTCLUB trademark in connection with the advertising, offering for sale, sale or distribution of the Licensed Services. Notwithstanding the foregoing, in the event that this Agreement is terminated pursuant to this paragraph 8(b), Barnaby may phase out the use of the

COMFORTCLUB trademark in connection with the Licensed Services over a period not to exceed three (3) months following the date of termination.

9. Assignment.

Barnaby may not assign or transfer this Agreement except as part of the sale or transfer of its entire business. Barnaby shall provide McAfee with written notice of any such sale or transfer of the Agreement at least sixty (60) days prior to the effective date of the sale or transfer. Prior to the effective date of the sale or transfer, McAfee may object to any sale or transfer of the Agreement to a provider of heating, air conditioning, and ventilation equipment and services provider. If McAfee raises such an objection, Barnaby shall exclude this Agreement from the business assets being sold or transferred or, if Barnaby refuses or fails to do so, McAfee may immediately terminate this Agreement.

10. Relationship of the Parties.

The relationship created by this Agreement is that of licensor and licensee. This Agreement does not create an agency relationship between Barnaby and McAfee. Barnaby, its agents and employees shall, under no circumstances, be deemed employees, agents or representatives of McAfee. Neither Barnaby nor McAfee shall have any right to enter into any contract or commitment in the name of, or on behalf of the other, or to bind the other in any respect whatsoever.

11. No Waiver.

Any failure by McAfee or Barnaby to enforce any provision of this Agreement shall not constitute a waiver of McAfee's or Barnaby's rights herein.

12. Governing Law.

This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of Texas or Ohio, without regard to its conflict of laws principles, and shall be enforceable against the parties in the courts of Texas or Ohio. For such purpose, each party hereby irrevocably submits to the jurisdiction of such courts, and agrees that all claims in respect of this Agreement may be heard and determined in any of such courts.

13. Notices.

Any notice, communication, approval or disapproval and request therefor required or permitted to be sent under this Agreement shall be duly made and shall be valid and effective only if in writing and sent by telefax, with a confirmation copy by First Class mail, or by

Registered or Certified Mail, Return Receipt Requested, postage prepaid, to the addresses set forth above.

14. Arbitration.

Any dispute between McAfee and Barnaby arising out of or in connection with this Agreement shall be finally settled by mandatory binding arbitration in either Dallas, Texas or Dayton, Ohio, conducted in accordance with the rules and procedures of the American Arbitration Association. Such arbitration shall be conducted before a single arbitrator, except in matters involving a dispute greater than five hundred thousand dollars, which shall be conducted before a three arbitrator panel with each side selecting one arbitrator and the two arbitrators selected by the parties choosing the third arbitrator. The arbitrator(s) shall be knowledgeable in the subject matter of the dispute. Judgment on a binding arbitration award may be entered in any court of competent jurisdiction. Arbitration has the potential to provide a more timely, more economic and more confidential resolution of any dispute between the parties. There will likely be less discovery and a determination by an agreed upon arbitrator or arbitrators rather than a judge or jury. *The parties mutually acknowledge that, by this agreement to arbitrate, each party irrevocably waives its rights to court or jury trial.*

15. Injunctive Relief.

Barnaby acknowledges and admits that its failure to advertise, promote, and use the Mark in accordance with this Agreement or to otherwise fulfill its obligations under this Agreement or to cease its activities as required upon expiration or termination of this Agreement will result in immediate and irreparable damage to McAfee, and that McAfee will have no adequate remedy at law for the injuries described in this Section. Barnaby agrees that, in the event of such failure, McAfee shall be entitled to equitable relief by way of temporary, preliminary, and permanent injunctions, and such other and further relief as any court with jurisdiction may deem just, in addition to and without prejudice to any other relief to which McAfee may be entitled.

16. Confidentiality.

Except as required by order of a court or government agency of competent jurisdiction, or by applicable laws, this Agreement and its provisions shall be kept confidential by and among the parties, unless otherwise agreed in writing.

17. Headings in this Agreement.

The headings in this Agreement are for convenience only, confirm no rights or

obligations in either party, and do not alter any terms of this Agreement.

18. Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

19. Binding Effect.

This Agreement shall be binding upon the parties and their respective successors and assigns. This Agreement may not be amended or modified except by a written instrument, signed by both parties.

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| McAfee Heating & Air Conditioning Co., Inc.<br>Licensor | Barnaby Heating & Air LLC<br>Licensee |
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |